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S. HRG. 104–869, Vol. VI

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

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SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS

ADMINISTERED BY THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

VOLUME VI

ON

WHETHER ADMINISTRATION OFFICIALS ENGAGED IN IMPROPER CONDUCT WITH RESPECT TO INVESTIGATIONS AND INQURIES RELATING TO WHITEWATER DEVELOPMENT CORPORATION, CAPITAL MANAGEMENT SERVICES, MADISON GUARANTY SAVINGS AND LOAN, AND RELATED MATTERS

NOVEMBER 7, 8, 9, 28, 29, 30, 1995
DECEMBER 1, 5, 6, 7, 14, 15, 1995

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S. HRG. 104–869, Vol. VI

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

ADMINISTERED BY THE

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INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

VOLUME VI

TUESDAY, NOVEMBER 7, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Today we begin the next phase of our Whitewater hearings. In the summer of 1994, we examined the question whether the White House took advantage of its special position to obtain confidential law enforcement information from Administration officials and friends of the Clintons who were highly placed at the Department of the Treasury and at the Resolution Trust Corporation.

More recently this summer we examined whether the White House used its special position to interfere with and impede law enforcement officers seeking to investigate documents in White House Deputy Counsel Vince Foster's office after his death. We now know that those documents included embarrassing notes about Whitewater and the Travel Office scandal. These were documents that directly touched the President and Mrs. Clinton.

In the course of these earlier hearings, we have encountered instances where some Administration officials testified falsely or tried to mislead Congress. We have seen secret law enforcement information eagerly sought and obtained by the White House using its special access to law enforcement agencies, and at times we have confronted a White House that would appear to be more interested in controlling the investigation and limiting the damage.

This Committee has heard testimony from high-ranking Administration officials that is simply not credible. When very well-educated, intelligent, and highly capable professionals come before the Committee and say they cannot remember where they were, what they did, or what they heard or said during critical timeframes or memorable events, it is not credible. We have repeatedly heard Ad-

ministration officials contradict each other in sworn testimony. We have even heard the sworn testimony of the Chief of Staff of the Department of the Treasury declaring that he lied to his own diary. This Senator is very troubled.

Now we will turn to the other areas that involve the use and possible abuse of White House power. We will examine the handling of various investigations touching the Clintons and the White House in different settings.

Last year when the first stories about high level, improper Treasury Department and White House communications surfaced, Treasury Secretary Lloyd M. Bentsen announced his own independent investigation by the Department's Inspector General Office.

However, during the hearings, Senators were surprised to learn that confidential information developed by the investigators of the independent office of both the Treasury and the RTC Inspectors General have been quietly released to the White House. Even last year some Senators were asking if the independence of both of the Inspectors General's investigations have been compromised, and whether the fruits of those investigations were used to frustrate the Senate's own efforts to get at the truth.

To get to the bottom of this, the Committee is recalling Secretary Bentsen, Lloyd Cutler, and other witnesses. Second, we will also examine investigations touching on the Clintons by agencies as varied as the Small Business Administration, the Resolution Trust Corporation, and the Department of Justice. In each case we will ask the questions, did the White House and its allies seek or obtain confidential information from their friends within the investigating agencies; did the White House try to manipulate these investigations and has there been a continuation of a pattern of concealing and misleading the press, the public, and this Committee.

As has been our practice over the past year, we will conduct our examinations in a thorough, fair, and impartial manner. The questions we ask here are the questions we have asked before: Did the White House do anything improper? If so, what and why.

Before we begin with our witnesses, and I want to thank Secretary Bentsen for being with us today, I would like to ask Mr. Chertoff to update the Committee regarding new evidence in regard to Margaret Williams, the First Lady's Chief of Staff.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. I think the Committee will recall that last Thursday when Mrs. Williams or Ms. Williams was here testifying about telephone calls that occurred on Thursday, July 22, a couple of days after Vince Foster's death and the day in which documents were taken from Mr. Foster's office up to the White House residence, there were a series of questions asked about telephone calls that had recently been discovered early in the morning from Ms. Williams to the First Lady in Little Rock and then from the First Lady in Little Rock to Ms. Thomases and then Ms. Thomases to Mr. Nussbaum.

One of the questions that arose was where was Ms. Williams during the morning of the 22nd, because the telephone records that we had indicated that early in the morning she called the First Lady from her home before 7 a.m. Little Rock time. We then had a page left for her from the First Lady in Little Rock at around

12:45 p.m. and a telephone call that appeared to come from Ms. Williams' home shortly before 1 p.m. in the afternoon. The question that naturally arose was why would Ms. Williams be calling the First Lady in the middle of the day from her home or using a telephone credit card if she was in fact at the White House.

Her testimony over the summer had indicated she was at the White House that morning, and in her questioning this last Thursday, Ms. Williams raised the possibility that she hadn't actually been at the White House at all that morning but that she had been home all morning and hadn't come in until she had a 1:30 appointment in the afternoon. I think several Senators and questioners pressed Ms. Williams on her memory about whether she was in the White House in the morning and she challenged us to go get the records of entry and exit that are provided by the Secret Service, so the Committee staff has done that, Mr. Chairman, and I can report as follows.

Again, putting it in perspective, between a quarter to 7 a.m.—I'm sorry, between a quarter to 8 a.m. and approximately 10 minutes to 8 a.m. Eastern Time in the morning of the 22nd, Maggie Williams had a 7-minute phone call with the First Lady in Little Rock. It now appears that 20 minutes later she first arrived at the White House, entering at 8:10 a.m. and based on the testimony we had over the summer about the time it takes Ms. Williams to get from her home to the White House, it appears that upon hanging up the phone with the First Lady, she departed immediately for the White House, arriving 20 minutes thereafter. What we now know, therefore, is at least as of 8:10 a.m., Ms. Williams was at the White House, so I think we've established that notwithstanding any issue of her own recollection, of course that leaves the question open why she would have made a call to the First Lady around noontime from her home or using her home credit card rather than using the White House phones. I provide this information, Mr. Chairman, to bring the Committee up to date and to indicate that we pursued the line of inquiry suggested by Ms. Williams and we have obtained the information that we needed.

Senator SARBANES. Could I ask Counsel, assuming the record shows she entered at 8:10 a.m., how do we know she didn't leave and go back to her house?

The CHAIRMAN. We don't, and that is exactly the question, because Ms. Williams raised very clearly the fact that she may not have even been at the White House that morning but rather as she saw through her notes that she had a 1:30 p.m. appointment that afternoon, that indeed she may not have left for the White House until it was time for the appointment. And that then leaves us with one of two irrefutable facts. First, she left the White House to go back to her home to make this phone call, for her own reasons because she did not want it to appear to be made through the White House; or second, she made a charge phone call to her residence, from her residence, but in no event should we leave open the possibility that she did not leave, go to the White House, then return to her home, make the call there, and then return back for her 1:30 p.m. meeting.

So either way, this theory that maybe she didn't leave her home, as she suggested, is not the case because records show that she en-

tered the White House. I think it's important because she at least left the impression that there was a very real possibility that she may not have even gone to the White House in the morning. That's not the case.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Could I ask Counsel, does the Secret Service check everyone in and out? Do they have a complete record?

Mr. CHERTOFF. I think—the short answer is yes. Apparently there are some gates in which someone can leave and there's a handwritten record rather than an electronic record. The electronic records are, I gather, maintained when someone uses an electronic entry card, so although we can never establish that no one left without a record, I think what is absolutely clear and undisputed, is that when there's a record that someone entered, they did in fact enter at that time.

Senator SARBANES. Well, now, we had a discussion last week on Susan Thomases. It was asserted she went into the White House and spent 6 hours there and then left. Is that corroborated by the Secret Service or they have no way of being certain about that?

Mr. CHERTOFF. All I can say, Senator, is the records that the Secret Service has show an entry at around 2:50 p.m. and an exit at around 8:20 p.m., and from our standpoint it's a matter of speculation about the possibility that she may have come and gone, you know, one or more times within that period.

Senator SARBANES. Does the Secret Service preclude that possibility? Is there a system so efficient that that could not have happened?

Mr. CHERTOFF. I think, Senator, as I have indicated, it is possible for someone to select a gate to exit from that would result in a handwritten record rather than an electronic record, and if that were so, I——

Senator SARBANES. They may go out such a gate without selecting it.

Mr. CHERTOFF. However, if they were to choose to exit or enter a particular gate, that does not have an electronic record, but a manual record, and that always leaves open the possibility that there could be an unrecorded entry or exit.

The CHAIRMAN. Secretary Bentsen, thank you for coming in. Would you rise for the purpose of taking the oath.

[Whereupon, Lloyd Bentsen, former Secretary of the Treasury, was called as a witness and, having first been duly sworn, was examined and testified as follows:]

The CHAIRMAN. Thank you, Mr. Secretary.

At this point we will turn to Senator Bond.

Senator SARBANES. Mr. Chairman, does Secretary Bentsen have an opening statement?

Mr. BENTSEN. Mr. Chairman, before I take questions, could I make a statement?

The CHAIRMAN. Certainly, Mr. Secretary. I thought Senator Bond had a statement before we got into anything. Please accept my apologies. If you have a statement, we would be delighted to hear your statement.

SWORN TESTIMONY OF LLOYD M. BENTSEN
FORMER SECRETARY OF THE TREASURY

Mr. BENTSEN. Thank you. If you would, Senator, I would like to make just a few brief points before taking questions.

First, on March 4, 1994, I requested the independent, nonpartisan Office of Government Ethics to investigate the Treasury–White House contacts. I took those actions on my own, immediately after reading about these matters in the press.

Second, I was the first to initiate any review of these matters.

Third, the Office of Government Ethics found no violation of ethical standards by any Treasury official serving at that time. The Independent Counsel found no criminal violations. I was fully prepared to take swift action if such violations had been found.

Fourth, the Treasury Department went to extraordinary lengths to cooperate not only with the Office of Government Ethics but also with the five other organizations that required our assistance as they conducted reviews: The Senate and the House Banking Committees, the Independent Counsel's Office, the Treasury Inspector General's Office, and the White House Counsel's Office.

Fifth, as we worked with the relevant Congressional Committees and the other investigating entities, we took great care to adhere to any and all legal and ethical standards.

Sixth, during this process, with the dedicated help of career professionals throughout the Department, the work of the Treasury went on.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Secretary.

Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you, Mr. Chairman.

Thank you for your decision to continue this investigation looking into the Treasury Department's role in managing and controlling the supposedly independent Inspector's General investigation into the White House contacts involving the Whitewater–Madison matters. Mr. Secretary, it is with regret that we see you back here today, but——

Mr. BENTSEN. I share that with you, Senator.

Senator BOND. I certainly can imagine, because last summer when we held these hearings, I was very concerned, as I think my colleagues will remember, about the Treasury Department once again turning over information to the White House in the middle of an investigation. I was concerned that a supposedly independent agency was being used for inappropriate purposes.

Last summer the primary focus of the hearing was on the propriety of the tipoffs and heads-up and confidential information relating to an ongoing criminal investigation in the Clinton campaign, as well as a business department in the White House but in addition, this Committee spent a fair amount of time on the question of after tipping off the White House, the people involved then lied to Congress about what had been done.

I won't go back into the testimony and evidence we had relating to Mr. Altman and Ms. Hanson. All I can say is here we go again. In the deposition the RTC's Counsel to the independent Inspector's

General, she said in her deposition, when I became aware that the transcripts had been released to the White House on the 23rd, this is the 23rd of July last year, I was also concerned that those transcripts contained material concerning the subject matter of RTC's underlying criminal investigation.

Our whole investigation was occasioned by the fact that Treasury had released that material in the first place to the White House and they had just done it again. That sets the framework in which we need to follow up with some questions. First, I would ask if they put up the Treasury news release document, X000903, it's a statement of Treasury Secretary Lloyd Bentsen, this is your statement, Mr. Secretary, that you've instructed the matter be referred to the Office of Government Ethics for a thorough review.

I did not attend any of these meetings, nor was I informed of any of these meetings. Mr. Secretary, on March 3, you said that you were not informed of any of these meetings. We now know and we have evidence that both Ms. Hanson and Mr. Altman went to the White House and conveyed this information on February 2.

Subsequently we have received testimony that you met with both Mr. Altman and Ms. Hanson on February 1 and February 3, the day before and the day after they went to the White House. Is it still your testimony that you did not know from either of those meetings that they either planned to or had gone to the White House to discuss the matter of Whitewater with members of the White House staff?

Mr. BENTSEN. Absolutely, no change whatsoever.

Senator BOND. You did not—they did not tell you—if you would leave that up on the——

Mr. BENTSEN. As I recall, we were talking about statute of limitations in that February 1 meeting, and the necessity and from my viewpoint, to extend the limitations.

Senator BOND. In neither of those meetings, before or after the meeting at the White House, did you know of any conveyance of information by Ms. Hanson and Mr. Altman to the White House about the nature of the investigation?

Mr. BENTSEN. That's correct.

Senator BOND. Now, Mr. Secretary, there is a note at the bottom of this copy of the news release, "Mack, per Joel. 'This will cover us so we don't have to do anything further.'"

Mr. McLarty has responded to us that he was indeed the "Mack" referred to in this note. He did receive it. "Joel" is Joel Klein, Deputy White House Counsel, and "P" refers to Patricia McHugh, Mr. McLarty's Administrative Assistant.

Mr. Secretary, at the time that you issued this statement, did you have any idea that the White House regarded this as a cover so that they will not have to do anything further?

Mr. BENTSEN. I would not put that interpretation on it, but I certainly did not, and I do not put that interpretation. I can not imagine that.

Senator BOND. Did there ever come a time when you believed that this was in fact an—the OGE investigation was a cover so the White House would not have to do anything further?

Mr. BENTSEN. The OGE as a cover? Certainly not, Senator I called on the OGE because I thought the Office of Government Eth-

ics was the appropriate agency to do that. It is an independent agency. It is an agency headed up by Steve Potts, as I recall, with a 5-year term appointed by President Bush, so it would be above political influence.

They had that kind of a responsibility and I thought that was the appropriate group to do it. That's why I called on them to get to the bottom of it and let me know what was taking place.

Remember this, Senator. As a U.S. Senator, if I had a constituent that had some problem with some agency and I thought that they were getting the worst of it and not being fairly treated, I went after it all the way to try to help. When I became Secretary of the Treasury, the roles were reversed on me, because of the specific legislation from the Congress, I could not get involved in an individual case of the RTC, so to see that I did not, because it was a reversal of roles, I set up Ed Knight, the General Counsel, to stop any kind of memorandum coming across my desk that dealt with an individual case and I said, "And see that I do not get involved in any of them."

The other thing, I went to Mike Levy, who is our Legislative Liaison, and I said you're going to have House Members, you're going to have Senators who are going to be concerned about individual cases and will want intervention by me. I cannot do that. Now, you tell them go direct to the RTC. Don't come to me. Don't get me involved in those individual cases.

Senator BOND. Mr. Secretary, you mentioned that the OGE was an independent body. Were you aware that the draft report of the OGE was subjected to edits by Francine Kerner and representatives of the Office of General Counsel of the Treasury before it was issued?

Mr. BENTSEN. No, I don't have that knowledge.

Senator BOND. Would that kind of editing be consistent with an independent investigation and evaluation?

Mr. BENTSEN. I would think the only thing that could be done in that regard would be if something was overlooked and they suggested that that also be delved into. I don't know the extent of the editing.

Senator BOND. Mr. Secretary, as a result of the information that was developed at the hearing last year, I submitted additional questions to you for the record. You understand, of course, that the answers to questions submitted for the record are subject to the same requirements and the same responsibility as testimony given directly to the Committee, do you not?

Mr. BENTSEN. I would assume so.

Senator BOND. Mr. Secretary, the questions were answered in a letter—first, there was a memorandum from Ed Knight to Michael Levy, and Mr. Levy then wrote a letter forwarding the answers to Chairman Riegle. It does not show a date on that transmittal, but these letters were—these questions were directed to you. The memorandum states that—from Mr. Knight states, "Dennis Foreman and my answers are based on our personal knowledge. The questions addressed to the Secretary have been answered on behalf of the Department." Why were they answered on behalf of the Department and not you personally?

Mr. BENTSEN. I don't see the difference.

Senator BOND. So all of these answers reflect your best judgment, your personal knowledge, and the efforts of the people under your direction to respond fully and fairly to the questions?

Mr. BENTSEN. Let me tell you that I don't remember these, with the flow of information that came across my desk. These people had a responsibility. I assume they fulfilled it for me.

Senator BOND. So you do not take personal responsibility for the answers?

Mr. BENTSEN. I haven't read these, Senator.

Senator BOND. Pardon.

Mr. BENTSEN. I haven't read these. If I read them in the past, I don't remember that, and I have not—I was just given these 2 minutes before I stepped out here.

Senator BOND. These were prepared—I asked, for the record, questions of you.

Mr. BENTSEN. I understand that.

Senator BOND. The submission to Chairman Riegle was by Michael Levy. Is he the one who takes responsibility for the question—the answers to the questions?

Mr. BENTSEN. Well, I would assume so. Of course I'm Secretary of the Treasury and have the ultimate responsibility, but in an office with the demands on time such as that, many of these things are taken care of by subordinates. You know that, Senator.

Senator BOND. I believe that these were of sufficient import that they should have had the best information available in the Treasury and the best information, the fullest information provided in response to my questions. Would that not be a fair assumption?

Mr. BENTSEN. I would certainly hope so. You would be deserving of that.

Senator BOND. I asked specifically, among the questions, there were three questions I asked for the record. First, why did the non-Inspector General personnel communicate with the White House about the release of the transcripts? Second, did any Treasury personnel consult with RTC personnel about the propriety of releasing the Treasury–RTC depositions before they were released to the White House? Third, provide the dates all depositions or selected depositions were made available to persons other than the deponent or Treasury–RTC staff.

I will have to tell you that the answers to these questions based on the information we have now received was either inaccurate, inadequate, or simply misleading.

Mr. BENTSEN. Well, I certainly don't think they would have been misleading, knowing the character of the people that apparently signed this.

Senator BOND. The first question I referred to about why did the non-Inspector General personnel communicate with the White House, the answer is, "The Treasury officials that communicated with the White House regarding release of transcripts were responding to White House requests."

Now, there is no mention of a luncheon that you had with Mr. Cutler on June 21. Do you recall the luncheon that you had with Mr. Cutler on June 21 of that year?

Mr. BENTSEN. I recall having a luncheon with him. I couldn't tell you the specific date any more than you probably could on some of your luncheons, but I do recall having one with him.

Senator BOND. The talking points prepared for Mr. Cutler by Ms. Sherburne included the following: The Inspectors General will proceed jointly by taking sworn depositions of those involved in the contacts. We likely will have transcripts within 24 hours, including transcripts of depositions of Treasury and possibly RTC witnesses after the completion of the depositions of White House witnesses.

Mr. Cutler——

Mr. BENTSEN. I don't recall any such detail in a conversation with Mr. Cutler.

Senator BOND. You do not recall having that conversation at the meeting with Mr. Cutler?

Mr. BENTSEN. With those specifics, no, I don't recall it.

Senator BOND. Did you in fact discuss the investigation or the transcripts with Mr. Cutler?

Mr. BENTSEN. I don't recall that, Senator, any more than you could probably recall that kind of a luncheon meeting. I would—that was about the time we were having a problem with a drop in the dollar, as I recall.

Senator BOND. Mr. Cutler states——

Senator SARBANES. Could I ask Senator Bond which talking point you are referring that you read from?

Senator BOND. These were talking points—I apologize. These were talking points for the meeting with the White House, with White House lawyers on July 1.

Senator SARBANES. So the questions you were putting to Secretary Bentsen about a luncheon he had with Cutler on June 23, you were quoting talking points prepared for a meeting on July 1 that had nothing to do with Secretary Bentsen; is that correct?

Senator BOND. Mr. Cutler testified that at the meeting—the talking points are the talking points for the lunch——

Mr. BENTSEN. If you're having trouble remembering something you read a few minutes ago, you can see the problems I'd have.

Senator BOND. There's a tremendous amount of information, Mr. Bentsen.

Mr. BENTSEN. I share with you a tremendous amount of information.

Senator SARBANES. It's worse than that, Mr. Secretary. You were being asked about talking points, it was asserted they were prepared for your luncheon and they were prepared for an entirely different meeting a week later. Isn't that correct?

Senator BOND. Senator Sarbanes, I will correct that and say that the talking points for the lunch between Mr. Cutler and Secretary Bentsen said, "Review status of Congressional hearings."

Now, Mr. Cutler testified in answer to the question by Mr. Chertoff, "What did the Secretary say?" The answer, "He agreed in principle with the idea that we should share and collaborate, and I believe it was left that I would work it out with Mr. Knight, his Special Assistant or that Jane and Sheila would work it out with Mr. Knight or other people in the Treasury."

Does that—is——

Mr. BENTSEN. Let me state, and I can't relate to the specific date, but I can say that we agreed to work insofar as to get to the bottom of this and finding out what was happening, and I do recall, of course, that we sent depositions over to him after Mr. Fiske, the Independent Counsel, had completed his investigation, as I recall, about June 30, and then as I recall, Mr. Cutler was to testify before a Congressional Committee and asked for help insofar as the information.

Now, he could have come over and deposed any one of these witnesses himself. He had full authority to do that. Anybody in Treasury or RTC that he wanted to depose, he could. We sent him these depositions to save time so he could prepare the information for the Committee. The Committee deserved the fullest of information that could be obtained to develop as much accuracy as they could.

Senator BOND. And were you aware of or do you recall at that luncheon giving Mr. Cutler the impression or reaching the understanding with him that you would share and collaborate on this information?

Mr. BENTSEN. I do not relate it to a specific date, but I did tell you that we wanted to help him get to the bottom of it, and they had been particularly helpful to the IG. Mr. Cutler had, the White House had, in providing information to the IG, Treasury's IG, as they were following through on the instructions of the Office of Government Ethics.

The Office of Government Ethics, of course, has no investigative power and they went to the IG to follow through and to investigate those areas that were of concern to them.

Senator BOND. Were you aware that on July 5, the Treasury personnel and RTC personnel had conferred about the propriety of sharing those depositions taken by the IG's of both the RTC and the Treasury with the White House, they strongly objected and said it would be inappropriate?

Mr. BENTSEN. Who objected?

Senator BOND. The IG's of—specifically of the RTC.

Mr. BENTSEN. No, I did not know that.

Senator BOND. The question that we—second question—that was the second question that I asked. The answer that is provided in this letter in response to that question does not refer to the meetings on July 5 in any manner and states that the first disclosure was made jointly by the Treasury and RTC Inspectors General on July 18. In fact, Ken Schmalzbach of the Office of General Counsel had received the transcript——

Mr. BENTSEN. Help me on this, Senator. Which question are you referring to?

Senator BOND. Question No. 6 in the questions I submitted to the record.

Mr. BENTSEN. Now tell me what your concern is.

Senator BOND. The answer states that the first disclosure was made on July 18. In fact, Mr. Ken Schmalzbach got the transcript as early as July 8. He states that he returned them on July 13 without having read them because Ms. Kerner asked for them back.

Mr. BENTSEN. So.

Senator BOND. So it was not accurate to say that the first transcripts were turned over on July 18.

Mr. BENTSEN. I'd have to look into that, Senator. I don't know.

Senator BOND. One of the other answers that concerned us a great deal in response to that question, if you look at page 4 of the answers, there are 6 bullet points. The third bullet point says, "Given that the interviews addressed Treasury–White House contacts that had already taken place, no new information concerning RTC matters was imparted to the White House."

How can you assure us that no new information was imparted to the White House when, in fact, the White House was given, over the subsequent objections of the RTC Counsel, the unredacted material in the depositions? How did the Treasury know that the White House already had all that information?

Mr. BENTSEN. Well, as I have stated before, Senator, he could come over and he could depose any one of those people insofar as information. That was within his authority.

Senator BOND. But it was not within his authority to see depositions taken by the RTC Inspector General. The RTC Inspector General certainly thought it was——

Mr. BENTSEN. I assume he could come over and still depose people in the RTC in digging for this information.

Senator BOND. But he had no right to get unredacted information from IG depositions taken by the RTC?

Mr. BENTSEN. But could not he have come over and deposed these witnesses himself to pick up that information?

Senator BOND. He did not.

Mr. BENTSEN. I say could he have not done so?

Senator BOND. The question is, you stated your Treasury Department, in response to questions I asked you, said that all of this information already was in the hands of the White House, and that's what we are trying to find out, how much information did the White House have? There's a continuing pattern that all the information, whether it be on investigations in Arkansas or investigations that went on in Washington, has been and was being shared with the White House and yet the Treasury response is not forthcoming as to——

Mr. BENTSEN. I assume you mean with the Special Counsel, with Cutler. Is that what you're saying?

Senator BOND. The answer says that all of the information had been imparted to the White House. No new information was imparted to the White House. I just want to know why the Treasury thinks——

Mr. BENTSEN. Does that mean Cutler?

Senator BOND. It's your answer, not mine.

Mr. BENTSEN. Well, this was just handed to me as I came in here, Senator. I would have to check that to find out. I would assume but I can't swear to that. I would assume that means Cutler.

Again, it's the type of thing that he was capable of getting if he had the time to do it, but he did not between the time that Fiske said that we could proceed in this information of these witnesses and the time he was going to be testifying before the Senate Committee. Therefore, we were giving the depositions to him.

Senator BOND. It's clear that the depositions were given to him, it's clear that unredacted depositions were given to him over the strong objection of the RTC, and unfortunately——

Mr. BENTSEN. I think what you had in that situation, you had a difference of opinion amongst the attorneys and amongst the investigators.

Senator BOND. Well, my problem is that these answers are not responsive. Apparently you do not take responsibility for these answers that were prepared in response to questions I asked you.

Mr. BENTSEN. No, as Secretary of the Treasury I have a responsibility finally for what people in Treasury do, I understand that one.

Senator BOND. I believe Mr. Chertoff wants to follow up with some questions, Mr. Chairman. I will relinquish the remainder of my time.

The CHAIRMAN. Thirty minutes and then we'll come to you—we have 3 minutes left, notwithstanding taking some—go ahead.

Mr. CHERTOFF. Let me start with a very simple question, Mr. Secretary. When you assigned the Inspector General's Office to participate in this investigation, did you do so with the understanding of the intention that they conduct an independent investigation?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. Did you understand or did you have an expectation that members of the General Counsel's Office which were directly under the supervision of Jean Hanson would participate in the investigation?

Mr. BENTSEN. I would assume that the Inspector General could call on any of these people for additional information that they wanted, whether it was the General Counsel's Office or anyone in Treasury.

Mr. CHERTOFF. My question is not whether the Inspector General could call on the General Counsel as witnesses.

Mr. BENTSEN. If you're getting at this point, in no way should the General Counsel's Office or anyone else in Treasury try to dictate to the IG what they did in that regard.

Mr. CHERTOFF. Did you know, Mr. Secretary, that members of the General Counsel's Office, including people working directly under one of the witnesses who was being examined, actually worked on editing the draft report that the Inspector General's Office sent to OGE?

Mr. BENTSEN. Depends on—no, I did not, but it depends on what the word "editing" means. Meaning if they were trying to be sure that full information was developed and offering that to the IG—the IG was the determinant. They were in charge.

Mr. CHERTOFF. What I mean by "editing" is taking advance copies of the transcripts and advance copies of the draft report and making changes to it, substantive changes, so those would be incorporated in the Inspector General's report. Did you know they were allowed to do that?

Mr. BENTSEN. No, I did not.

Mr. CHERTOFF. Whose decision was it to turn over transcripts to the White House of the depositions? Was it your decision or the Inspector General's decision?

Mr. BENTSEN. Oh, I accept responsibility for that. We discussed it. I discussed it with General Counsel. I discussed it with others, checked it, as I recall. I believe I checked it with the IG's Office.

Mr. CHERTOFF. When you say you checked it—"discussed it with General Counsel," are you telling us you discussed with Ms. Hanson whether to turn them over or do you mean Mr. Knight?

Mr. BENTSEN. At that point probably Mr. Knight. I would have to go back and check the dates.

Mr. CHERTOFF. Well, the reason this is important, Mr. Secretary, is because this issue came up very specifically in the testimony and in the answers to the questions that were provided afterwards, and the question is whether the decision to send the transcripts over was one made by the Inspector General based on his judgment or whether it was one that was made before the Inspector General made a decision. Do you know which it is?

Mr. BENTSEN. Let me tell you, I take full responsibility for sending the depositions over there. I checked with a number of people as to whether or not I was required to or whether or not I should, and made the final judgment to send them there.

Mr. Cutler had been very forthcoming in providing information to the IG's Office, and very helpful in that regard, and we in turn thought it was important for us to help him provide full, complete testimony to the Congressional Committee that he was to appear before.

Mr. CHERTOFF. Did you view—I'm sorry, did you want to consult?

[Witness conferred with counsel.]

Mr. BENTSEN. I know that we—I know that we conferred with the IG, and I would think the IG, if I remember right, asked for my opinion on it.

Mr. CHERTOFF. Are you saying the Inspector General asked you whether he could turn them over or that you or someone at your direction told him that they were going to be turned over?

Mr. BENTSEN. That I don't remember.

Mr. CHERTOFF. Mr. Secretary, let me ask you this. Did you have a conversation directly with Mr. Cutler in which you and he reached an agreement that the transcripts were going to be turned over to Mr. Cutler for his use in his internal review?

Mr. BENTSEN. I had a conversation with Mr. Cutler. Well, I had two or three conversations with Mr. Cutler in that regard, and I recall the last one he was having, felt he was not getting cooperation out of Treasury and wanted to see if we could get the depositions expedited to come to him, and I assured him we would, and we sent them there.

Mr. CHERTOFF. Now, when you assured Mr. Cutler that he was going to get the transcripts, had you already consulted with the Inspector General for his views?

Mr. BENTSEN. I would assume I had.

Mr. CHERTOFF. Well, we have evidence that indicates that the discussions and agreements between you and members of your office and Mr. Cutler and members of his office about turning over the transcripts occurred in the late part of June and early part of July of last year, but Mr. Cesca, the Inspector General of the Treasury, wasn't consulted until July 23. Does that ring a bell with your recollection?

Mr. BENTSEN. I am not—earlier conversations, I would assume, would have been quite general insofar as cooperation, trying to get to the bottom of the situation, get the facts out.

Mr. CHERTOFF. Would it surprise you to learn that Mr. Cutler believed that well before July 23, he had an agreement with you or an understanding with you that the transcripts——

Mr. BENTSEN. As to what?

Mr. CHERTOFF. That the transcripts would be turned over to him.

Mr. BENTSEN. I wouldn't see the problem in that.

Mr. CHERTOFF. Well, wouldn't it have seemed advisable to consult with the Inspector General to get his views before you reached that agreement?

Mr. BENTSEN. I can't relate as to the specific dates. My memory is not that good.

Mr. CHERTOFF. I am not trying to pin you down on specific dates but——

Mr. BENTSEN. Yes, you are, but—yes, you are.

Mr. CHERTOFF. I am trying to get a general concept here. Did you feel it was important in making your decision to turn over the transcripts to consult with the very independent Inspector General that you had designated to conduct the investigation?

Mr. BENTSEN. Frankly, I don't remember the details of all the people I consulted with, but I satisfied myself to the fact that it was within my authority and it was the proper thing to do.

Mr. CHERTOFF. Was it your understanding—I know we are running out of time. I have——

The CHAIRMAN. I am going to let you finish this line just for purposes of some continuity.

Mr. CHERTOFF. Was it your view that it was consistent with the independence of this investigation which you had publicly indicated would be an independent Inspector General's investigation, to negotiate and make decisions about turning over the product of that investigation without consulting with the investigators themselves?

Mr. BENTSEN. In no way did that impinge on what they did in their investigation.

Mr. CHERTOFF. Did you ask them whether it would impinge on it?

Mr. BENTSEN. Ask who?

Mr. CHERTOFF. The Inspectors General, the people who were doing the actual investigation.

Mr. BENTSEN. I discussed it with them but I do not recall the dates.

Mr. CHERTOFF. Would it surprise you to learn, Mr. Secretary, that the documents, the transcripts, actually made their way over to the White House before the Treasury Inspector General was asked whether he would OK it?

Mr. BENTSEN. That I don't know.

Mr. CHERTOFF. That would surprise you?

Mr. BENTSEN. I'm not aware of that.

The CHAIRMAN. We will return to that later. We have gone over the limit. Senator Sarbanes now has 30 minutes.

Senator SARBANES. Mr. Secretary, let me say first, I'm very sympathetic to what you're going through this morning. Earlier you were questioned by Senator Bond who in the course of his question-

ing to you quoted from a memorandum of talking points allegedly prepared for Mr. Cutler for his luncheon with you, and that memorandum was quoted from as questions were put to you about what transpired at that lunch, in fact suggesting that these talking points that had been prepared for Cutler supposedly for that lunch would reflect the drift of the conversation at the luncheon.

Now, it develops that those talking points were prepared not for that luncheon that you had with Mr. Cutler but they were prepared for a meeting that took place a week later that had nothing to do with you at all.

It's kind of rough going when you encounter questions of that sort which are throwing at you material as though this shaped your meeting when it had absolutely nothing to do with your meeting, so I know it's very difficult, but I want to make that very clear for the record, there was a string of questions put to you earlier about your luncheon with Mr. Cutler. The questions were based upon a memorandum of talking points supposedly prepared for Mr. Cutler for that luncheon, and it turns out that that memorandum was prepared for an entirely different meeting which occurred a week later after your luncheon with Cutler and had nothing whatever to do with you, so I appreciate that that would be very difficult to try to respond to questions of that sort.

Mr. BENTSEN. Senator, I'm no longer surprised at questions that are posed to me in hearings like this.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Secretary. I would like to put into context——

Mr. BENTSEN. Let me make another point to you Senators. With all due respect to staff, I doubt you all are bound by what the staff tells you to ask at a meeting you're coming to. Frankly, I made up my own mind what I would ask. Sometimes I would include some of the things staff asked me to. Staff never dictated to me what I would speak about.

Mr. BEN-VENISTE. Mr. Secretary, I would like to first put into context one thing, and that is it is my understanding that you were advised through Counsel that the subject of your testimony here today would concern the transmittal of transcripts and would be more or less limited to that subject matter.

Mr. BENTSEN. That was my understanding.

Mr. BEN-VENISTE. Second, sir, I would like to try to put into context the timeframe in which these investigations and your requests of OGE and then the respective Inspectors General took place. Is it correct, sir, that Independent Counsel Fiske had already examined the witnesses under oath, principal witnesses involved in this?

Mr. BENTSEN. That's correct.

Mr. BEN-VENISTE. Then your investigation was essentially put on hold until that investigation could be concluded at Mr. Fiske's request, if I understand you correctly?

Mr. BENTSEN. That is correct.

Mr. BEN-VENISTE. Now, is it the case, and this may seem a very elemental question, and I apologize in advance for asking it, but is it the case that you were interested in all of the investigative authorities who were interested in answering these questions to get

a complete, full, and honest recollection from each of the witnesses who would be involved in providing information?

Mr. BENTSEN. Absolutely. That was my responsibility and that was one of the reasons I immediately moved on this thing and called for the Office of Government Ethics.

Mr. BEN-VENISTE. Essentially if I understand the facts correctly, the witnesses had given testimony before Independent Counsel Fiske and/or the Grand Jury as he saw fit, and we've not inquired into what he did with the information, but then they gave testimony in sworn depositions before the Inspectors General; is that correct, sir?

Mr. BENTSEN. That is correct.

Mr. BEN-VENISTE. Then at that point and knowing that was going to occur, did you feel that there was anything improper in sharing that information with the White House in their investigation through Mr. Cutler?

Mr. BENTSEN. No, I did not or I would not have sent the depositions over there or had them sent.

Mr. BEN-VENISTE. At that time when you made the request of the OGE, could you explain why it was you selected OGE to provide assistance to you?

Mr. BENTSEN. Well, because they are independent, and that's their purpose, to determine if ethics standards had been violated and that was the question here. Independent Counsel had already found that there were no criminal actions in this exchange, so you had a situation with Stephen Potts, appointed by President Bush, 5-year term to assure independence, and I knew him also to be a man of integrity and ability, so I had confidence in what they would do.

Mr. BEN-VENISTE. Then if I understand correctly, because Mr. Potts and OGE did not have the capability to provide investigative services, you suggested that he make use of the Inspector General's capabilities that you would provide.

Mr. BENTSEN. Absolutely. I wanted to lend every effort I could, cooperation, to see that we got to the bottom of this.

Mr. BEN-VENISTE. So if I understand correctly, sir, it was at your direction that all the resources necessary for OGE to do a competent and complete job within the timeframe requested were made available to OGE.

Mr. BENTSEN. Let me tell you. We sent them, as I recall, approximately 6,000 documents. We brought in special inspectors from the IRS. We had to use a warehouse to store all of the data, anything that appeared to have any kind of connection with Madison Guaranty or with these contacts at the White House. We did all of those, including my own computer. We went into each of those.

Mr. BEN-VENISTE. Now, did you consider it important to have at least a draft of the IG report and the deposition transcripts to prepare for your Congressional testimony, sir?

Mr. BENTSEN. Yes, I did.

Mr. BEN-VENISTE. And now to the question of these so-called edits, it is our information that with respect to suggestions, cite checking, as one witness, Mr. McNamara, has told our Committee, flyspecking, checking cites, making sure that the deposition transcripts were properly cited, and to suggest additional testimony

that might be pertinent to the reports, such information was provided to determine whether or not at the discretion of the IG's Office it would be accepted.

Mr. BENTSEN. That's right. That was their determination. I made that point earlier.

Mr. BEN-VENISTE. Do you have any reason to believe, sir, that either the OGE or the IG's were somehow pressured to accept information or conclusions that they did not arrive at themselves?

Mr. BENTSEN. Absolutely not.

Mr. BEN-VENISTE. With respect to Mr. Cutler's investigation at the request of the President, did you feel, sir, that it was appropriate or indeed necessary for you to cooperate with that investigation to the best of your ability?

Mr. BENTSEN. Certainly I did. You know, I know Lloyd Cutler is a very able attorney and a man of integrity. He had served both Republican and Democratic Presidents with distinction.

Mr. BEN-VENISTE. Did you know, sir, that on the date, July 23, that the transcripts were transmitted to White House Counsel's Office for Mr. Cutler's review, that essentially all of the depositions which the IG's wished to take had already been taken?

Mr. BENTSEN. That's correct, the way we understood it at that time. I do think after that——

Mr. BEN-VENISTE. There might have been one deposition.

Mr. BENTSEN. You had one. You had the comptroller and that in no way impinged on the previous testimony.

Mr. BEN-VENISTE. So not only had the testimony been taken by Mr. Fiske, the testimony been taken in depositions by the Inspectors General, but indeed they had already concluded their investigations.

Mr. BENTSEN. That's correct.

Mr. BEN-VENISTE. And with respect to this question of redactions, because that's something that has puzzled me as I have looked at this.

Mr. BENTSEN. With respect to the question of what?

Mr. BEN-VENISTE. Redactions, the issue of whether sensitive information was somehow released in unredacted testimony of transcript testimony, do you have any reason to believe that material, nonpublic information was somehow released to the White House as a result of this transmission process?

Mr. BENTSEN. No.

Mr. BEN-VENISTE. I am not presuming this occurred but did you see anything improper in witnesses who would give further sworn testimony in the future before Congressional investigations or other accounts of their testimony that they should somehow be deprived of any information that would help their recollection so that they would provide the best possible and most accurate testimony?

Mr. BENTSEN. You know, the idea that they cannot have that information, I don't understand that. What you're trying to do is to get to the bottom of this. You're trying to get all the information you can, you're trying to get correct information. So the more of it that you can have at your fingertips to study, the better job you can do, it seems to me, in getting complete information.

The CHAIRMAN. At this point, let me make an observation. I want to thank Mr. Ben-Veniste because I think he came to the heart of

it, Mr. Secretary. There is a problem. The problem arises if affidavits or sworn testimony from one person was given to another person in advance of that person's appearance before the Senate. This is not about someone refreshing his or her own recollection as to how they testified, but whether the White House and Mr. Cutler briefed officials in preparation for their testimony before this Committee about what others had said.

That is not the function of an independent investigation, and to share the product of that investigation with the White House Counsel and for the White House Counsel to disseminate that information to people either through their lawyers or directly, would be improper.

Second, another question is whether it really should have been done. The fact of the matter is that the Inspector General did not find out until he watched on television fully 3 weeks later that this was done. The Inspector General indicated that they were not aware of this, and we will have them testify, and that they had objected to this information being made available to the very people they were investigating.

Now, that's a fact. Time will be put back on the clock but I thought it's important to make the point. This is not a negligible point. It does not come down to trying to recall with particularity at what time you had a lunch or a conference. That's unfair. But it does come down to whether it was proper for the independent investigatory agency to make this information available to the very people who were being investigated.

Mr. BENTSEN. Let me tell you it was not the IG's responsibility, it was mine, to do that. The IG had the—just a minute, Mr. Chairman. The IG had the responsibility of getting to the bottom of this, doing the studies, getting me the information, and that's what I wanted.

The CHAIRMAN. Well, Mr. Secretary, if you have difficulty understanding that the independence of the investigation is compromised when such information is turned over to the Counsel of the White House.

Mr. BENTSEN. The investigation was done by the IG.

Senator SARBANES. The independence of the investigation was not compromised. The investigation was completed.

The CHAIRMAN. This Committee did not have the benefit of having people come here and testify without them being advised, in explicit detail, as to what others had testified to.

Senator SARBANES. That's a separate issue which we will explore your presentation of it which will not square with what has transpired. As far as the independence of investigation is concerned, there has been nothing that has been brought forth to suggest that it had been compromised in any way.

The CHAIRMAN. Let's not harp on one word. Let me rephrase it and say that the fact of the matter is that that work, that work product is compromised when it is made available, and when there is a Congressional Committee that is attempting to get the facts, to the very people who will testify and so there is a possibility of them tailoring their testimony and I believe that's what took place. Testimony was tailored because the IG's report was made available to Mr. Cutler who then used and shared that information with peo-

ple who gave testimony to this Committee. That's the problem and the IG was unaware of and opposed to the dissemination of that information.

Now you say you took responsibility for it. That's fine. At least you are one of the few people who come up here and said I did it, I understand. But I am telling you what took place as a result.

Senator SARBANES. Mr. Chairman, it is my understanding——

Mr. BENTSEN. Can I get into this deal?

The CHAIRMAN. Certainly, and I tried to do this to get down to what we are concerned about.

Mr. BENTSEN. Let me say, Mr. Chairman, I put this—had put into this instruction, and as we discussed, these transcripts are being provided to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing you with this letter will not be disclosed publicly or shown to individuals other than Mr. Cutler, who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary.

The CHAIRMAN. Mr. Secretary, let me commend you for that. But unfortunately, what took place, and I understand the restriction you placed on it, was summaries of the testimony of various witnesses were provided to those witnesses. Unfortunately, that is what took place.

Mr. BENTSEN. I understand that some of the attorneys do that. I found that out just recently.

The CHAIRMAN. Well, that's what disturbs this Senator and I was not aware of the restriction, and if the restriction had been followed we would not have even had this inquiry. But I appreciate that.

Mr. BEN-VENISTE. May I continue, Mr. Chairman?

The CHAIRMAN. Certainly, and I thank you for the indulgence.

Mr. BEN-VENISTE. No thanks are necessary, Mr. Chairman.

Mr. Secretary, let me go back and review this in the context of the colloquy that I've listened to, sir.

In terms of tailoring testimony, it has been established that the individuals in question gave sworn testimony already to Mr. Fiske, they gave sworn testimony to the IG's; correct?

Mr. BENTSEN. That's correct.

Mr. BEN-VENISTE. So, in terms of tailoring testimony, if there is any real material fact to be tailored, it would have to change two sworn versions of testimony already.

Mr. BENTSEN. They are in trouble if they do that.

Mr. BEN-VENISTE. They would be in possible big trouble if they did that with a bad intent.

Now, as you understood the situation, and we go to the question of compromising the IG's investigation. Let me assure you, sir, that in connection with the testimony that we have taken over the last several weeks, and we have taken well over 30 depositions on this subject, not one individual has stated, from the IG's Office or anyplace else, that their investigation was compromised, affected, coerced, or impeded in any way.

Mr. BENTSEN. That's correct.

Mr. BEN-VENISTE. Second, sir, let me say that the individuals, upon being questioned by the Inspectors General advised the individuals they were questioning that they fully expected those individuals to cooperate to the full extent with other investigations that were then ongoing, which then included Mr. Cutler's investigation on behalf of the President; is that so, sir?

Mr. BENTSEN. That's so.

Mr. BEN-VENISTE. So, when we get to the question of whether the OGE somehow reached a skewed or improper or implausible conclusion in their report to you, sir, as the result of your willingness to allow the White House to have the benefit at some point of this information, can you see that that was remotely possible?

Mr. BENTSEN. Remotely possible that what?

Mr. BEN-VENISTE. For the OGE to have reached a skewed or improper conclusion——

Mr. BENTSEN. No.

Mr. BEN-VENISTE. Or for your Inspectors General——

Mr. BENTSEN. No.

Mr. BEN-VENISTE. —in their investigation to have been adversely affected, much less thwarted in their investigation as a result of this?

Mr. BENTSEN. No.

Mr. BEN-VENISTE. I have nothing further.

Senator SARBANES. Mr. Chairman, earlier in the questioning to Secretary Bentsen by Senator Bond, with respect to the supplemental questions which were submitted to the Treasury Department, and the Treasury's response to those supplemental questions was, because a question addressed to Secretary Bentsen required information to be gathered from various parts of the Department, the answers are provided on behalf of the Department, not Secretary Bentsen personally.

The line of questioning suggested that somehow that was not a proper response or a proper procedure. Now let me say for the record, I am not going to quote all the questions, I am just going to give you a couple of questions as an example of what was being put, and to suggest that responding in this way was the appropriate way to respond because there was no way the Secretary personally could have had knowledge of the matters about which the questions were put. To suggest that somehow he was falling short of his responsibilities because of the nature of the response, I think, is completely missing the point.

In fact, let me give you a couple of examples. I won't go through all of them. I can go through most of them I can give you a couple of examples of questions that were put, we get a response from the Department saying the answers are provided on behalf of the Department.

Here is one, during his Treasury and Resolution Trust Corporation deposition, John Bowman was shown a document numbered 56588: "From whose file was this document obtained? Was this document produced to the Committee? Are there other copies of this document in Treasury personnel files? If there are other copies of this document, why were they not produced to the Committee?"

Now, I don't expect the Secretary to personally answer that question. I do expect the Department of the Treasury, you know, touching base with all of the relevant people, to answer that question.

Let me give you just another one: "Please explain the guidelines followed by the Department of the Treasury in producing documents to the Committee. What was the scope of the document production? Was it the same as for Independent Counsel Fiske?"

Then in the answer they say, "The scopes of document productions requested by the Committee and by the Independent Counsel differed." Well, so obviously someone had to go and examine the documents that were provided Independent Counsel Fiske and the documents that were provided to the Committee and make the comparison in order to respond to the question.

Now, I am very frank to say that if I had been told that the Secretary himself was engaged in that exercise, in order to personally be able to answer the question, I would say that the Secretary was not paying attention to the matters within the Department that he ought to be paying attention to it.

Mr. BENTSEN. There would just not be enough hours in the day.

Senator SARBANES. That's for sure. So I just want to register on the record that I think this manner of responding to the questions, supplemental questions that were put—was an appropriate way to do it, in fact, the only way to do it. There was no way that the Secretary himself, out of personal knowledge, could have answered many of the questions that were submitted in that follow-up. I think it's important to put that on the record because the line of questioning earlier suggested that somehow, the Secretary had fallen short in the nature of this response.

I think, in fact, it was a very professional and appropriate way to do business. I think it is important that the record reflect that.

Mr. BENTSEN. Thank you, Senator.

Senator MURKOWSKI. Mr. Chairman.

Senator SARBANES. I yield to Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Thank you, Senator Sarbanes, and I regret I had another meeting. Let me just say I am concerned when we badger people who come here. I have known Lloyd Bentsen a long time. If he tells you something, you can go to the bank with it. I trust his judgment. I would add the same for Lloyd Cutler. I can't imagine Lloyd Cutler doing anything in terms of not being honest and not having good judgment and I think we have to start with a premise that there are people who serve in Government, who serve us well, and we should not be so cynical and skeptical that we are ending up with a very distorted picture for ourselves and for the public.

Mr. BENTSEN. Thank you, Senator, thank you.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Let me say, if I might, that I want to associate myself with the comments of Senator Simon. I have been privileged, as each of us have been or virtually all us have been, to serve with the Secretary when he chaired the Senate Finance Committee and then I think he has served as a great Secretary.

My understanding is that once you became aware of this controversy you took the appropriate action and had the IG, the Office of Government Ethics check into this matter before proceeding with respect to any of the depositions or transcripts, you had some kind of an agreement with Counsel, you checked with your own Counsel.

I mean, I am not sure what higher standard we could expect of you. I think you did the right thing. Obviously, as the Secretary of the Treasury, you are involved in a host of responsibilities, this is one aspect, not the only aspect of your responsibilities, and I think that you did the appropriate thing and we ought to acknowledge that, and ought not to expect you to know every minute detail that in retrospect, looking backwards, someone has raised some question about. So I want to associate myself with Senator Simon's comments.

Mr. BENTSEN. Senator, thank you very much. I have done 30 years of public service, trying to make a difference. I am proud of that service.

Mr. BEN-VENISTE. Mr. Secretary, I would just like to go into, a little bit further, this question of editing, and I know that probably you don't have the particulars with respect to what we have on the answers to the questions, but your testimony has indicated that the essence of what we have was certainly within your knowledge as to what was done with respect to, quote, editing, and I would quote from the deposition of Mr. Schmalzbach, at page 325, line 6:

Let me just—I really object to the characterization of what we did as editing anything. What we identified was instances in which there was inconsistency between the transcripts and the draft chronology we got on the 22nd.

Question: These are inconsistencies that your staff identified; is that correct?

Answer: Right.

Question: So these were inconsistencies that your staff thought existed in the draft report between the draft report and the transcripts; correct?

Answer: Correct.

With respect to Mr. McHale's testimony, on page 98, line 7:

Received a draft of the IG's report. The Secretary was given a draft of the IG's report by the Acting Inspector General. Over that weekend of July 23, 24, probably starting on the evening of the 22nd, Peter and David—and I am not sure if they were assisted by anyone else, but Peter and David, and to a lesser extent myself, went through the report, just looking to see whether there were areas that we felt from our review of the transcripts left out significant areas or just flat—the citations or whatever they were referring to in your report were just flat contradicted by the transcripts.

Question: And did you provide the IG's Office with edits or suggestions?

Answer: I don't believe we provided this document, but, yes, we did.

Question: What was the reaction when you provided them with these edits?

Answer: I know that the final report did not incorporate a lot of the edits, but it did incorporate one or two of them. I think they just took them and—there was another scrub that the RTC and the IG were going to do, the RTC IG and Treasury IG were going to do sometime during the week of the 24th, and I assume they used them in that process. There was no real reaction.

The testimony I can assure you from the IG's Office is, we took what we thought was useful, we left out what we thought we didn't need.

Mr. BENTSEN. Fair enough.

Senator SARBANES. Mr. Secretary, just to follow up on that, in his deposition, Mr. James Cottos, the Assistant Inspector General for Investigations, had the following exchange because it bears on your turning it over to the IG and the nature of their investigation,

the suggestions here that somehow the inquiry was compromised in closing.

Question: Mr. Cottos, was it your view at the time your investigation was complete? At the time of the completion of your investigation, was it your view that it was a complete investigation?
Answer: Yes, it was.
Question: Was it your view that it was an accurate investigation?
Answer: Yes, it was.
Question: Was it your view that it was an impartial investigation?
Answer: Yes, it was.
Question: Did anybody in the Department of the Treasury or the Administration in any way try to influence the conclusions you reached?
Answer: No, they did not.
Question: Did anybody try to limit the subjects you addressed?
Answer: No, they did not.
Question: Did anybody suggest to you that there were any categories of wrongdoing or violations that you should not pursue?
Answer: No, they did not.
Question: Does it continue to be your view that your investigation was accurate?
Answer: Yes, it is.
Question: And thorough?
Answer: Yes.
Question: And impartial?
Answer: Yes.
Question: And complete?
Answer: Yes.

Mr. BENTSEN. Let me tell you, Senator, if it had been anything otherwise in trying to influence the IG in that regard, I would have damn well straightened them out.

Senator SARBANES. Thank you, Mr. Secretary.

The CHAIRMAN. Mr. Chertoff, I hope we will finish with the Secretary sooner rather than later, start our second panel and go to about 1 p.m. and then break for 1 hour and resume at 2 p.m.

Mr. BENTSEN. Mr. Chairman, I appreciate that. As you know, I have delayed a business trip to Europe for a day to accommodate the request of this Committee. I certainly would like to be able to get on with my trip.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Secretary, I just want to go back and set the stage for the investigation in 1994. Now, am I correct that you asked for an investigation or a referral to the Office of Government Ethics, when it came to your attention that there were allegations of improper contacts or discussions between members of the Treasury Department and members of the White House.

Mr. BENTSEN. Let me try to remember it in detail for you.

As I recall, about February 25, I heard that Mr. Altman had testified the day before that he had contact—had a meeting at the White House. Then, I think it was about March 3, I read in the newspaper of his statement of two other meetings at the White House. That's when I called for the Office of Government Ethics to get to the bottom of it and find out what was happening and see if there were any improprieties that had occurred.

Mr. CHERTOFF. You understood that among the people whose activities were going to be looked at——

Mr. BENTSEN. I beg your pardon. I am trying to get——

Mr. CHERTOFF. You understood that among the people whose activities were being looked at, was Ms. Hanson?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. The General Counsel?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. That of Roger Altman?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. And other people in the General Counsel's Office; right? Like Mr. Bowman and Mr. Foreman?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. So, when the Office of Government Ethics asked to have people conduct the investigation, you agreed that the Inspector General of the Treasury and the Inspector General of the RTC should assist in the fact-finding; right?

Mr. BENTSEN. Sure, I wanted full cooperation.

Mr. CHERTOFF. You specifically asked the RTC Inspector General to assist in this fact-finding; right?

Mr. BENTSEN. I assume I did. Frankly, I don't remember, I don't remember the details.

Mr. CHERTOFF. I can assure you that there is documentation to that effect.

Mr. BENTSEN. I would assume so. Why not?

Mr. CHERTOFF. Would you agree with me that the reason you selected the Inspector General's Office to conduct the investigation was because you had faith in their independence and integrity?

Mr. BENTSEN. I certainly had belief in their integrity and their independence, yes.

Mr. CHERTOFF. Am I correct the understanding you had with the Inspectors General of Treasury and RTC was that they would be free to run their investigation and handle it as they saw fit?

Mr. BENTSEN. As long as they dug at it and got everything they could. I certainly had the right to, if they weren't digging enough and pulling out the information, that I would have pushed them.

Mr. CHERTOFF. Now, as long as they were diligent, you were going to let them make the decisions because they were the independent investigators; correct?

Mr. BENTSEN. Yes, right.

Mr. CHERTOFF. Were you aware that on July 5, shortly after this investigation got started, the White House Counsel's Office had a meeting with the RTC Inspector General's lawyer and the Treasury Inspector's lawyer about the White House's desire to get hold of these deposition transcripts? Did you know about that meeting?

Mr. BENTSEN. I don't recall that meeting. Or that——

Mr. CHERTOFF. You would not have been there. Did anyone tell you about that meeting?

Mr. BENTSEN. No, I don't recall anyone telling me about it.

Mr. CHERTOFF. Did anyone tell you that at that meeting on July 5, the lawyer for the RTC Inspector General specifically told the White House that she absolutely objected to the White House getting any deposition transcripts; did you know that?

Mr. BENTSEN. No, I wasn't aware of that.

Mr. CHERTOFF. No one brought that to your attention?

Mr. BENTSEN. No.

Mr. CHERTOFF. Did you know that during the next days and weeks there were repeated efforts by the White House to get hold of those deposition transcripts?

Mr. BENTSEN. No.

Mr. CHERTOFF. In your mind, you had an agreement with Mr. Cutler to give Mr. Cutler the deposition transcripts; is that correct?

Mr. BENTSEN. That's correct.

Mr. CHERTOFF. That was a decision you made?

Mr. BENTSEN. That's right.

Mr. CHERTOFF. You made that without consulting with either the Treasury Inspector General or the RTC Inspector General.

Mr. BENTSEN. Oh, that, I don't recall.

Mr. CHERTOFF. You don't remember one way or the other?

Mr. BENTSEN. No, I don't recall.

Mr. CHERTOFF. Did Mr. Cutler tell you that he was having problems getting the transcripts because lower level people in the Treasury and RTC Inspector General's Offices objected?

Mr. BENTSEN. He did—if he did not specifically, he certainly inferred that he was not getting the cooperation that he would have hoped for.

Mr. CHERTOFF. Did you call up the RTC Inspector General and say is there some reason you feel you cannot cooperate with Mr. Cutler?

Mr. BENTSEN. I don't recall that.

Mr. CHERTOFF. Is there some reason you didn't call to find out?

Mr. BENTSEN. I just don't remember that detail.

Mr. CHERTOFF. To whom did you tell or give the order?

Mr. BENTSEN. Just a moment. I might further amplify my answer.

Mr. CHERTOFF. Sure.

Mr. BENTSEN. Mr. Cutler was not—did not deal with any specifics about the lack of cooperation, just said he was having trouble getting the depositions.

Mr. CHERTOFF. So you ordered the depositions to be turned over?

Mr. BENTSEN. That's correct.

Mr. CHERTOFF. Do you recall having a conversation or consulting with anybody in the Inspector General's Office to ask whether they had an objection?

Mr. BENTSEN. Frankly, I don't recall.

Mr. CHERTOFF. Who did you give the order to, to turn the transcripts over?

Mr. BENTSEN. Who what?

Mr. CHERTOFF. To whom did you give the order to turn the transcripts over?

Mr. BENTSEN. Oh, I don't——

Mr. CHERTOFF. Was it Mr. Knight?

Mr. BENTSEN. I don't remember. You must have something that shows that but I don't know.

Mr. CHERTOFF. Well, let me ask you this, Mr. Bentsen. What you have indicated to us this morning is that it was clear in your mind when you turned the transcripts over to Mr. Cutler that Mr. Cutler was not to use them to prepare or to show other witnesses.

Mr. BENTSEN. It was to be used only by his staff and for his testimony before the Committee and we—that's specifically said in the letter of transmittal.

Mr. CHERTOFF. Did you know that there were summaries of those very same depositions which your subordinates at Treasury

turned over to Mr. Cutler's office that were in fact shown to witnesses?

Mr. BENTSEN. I did not, certainly did not know that. I have found that out since I have come back and looked into some of this.

Mr. CHERTOFF. Would you agree with me that that decision to turn over those summaries violated the spirit of the letter in which you said there should be a restriction?

Mr. BENTSEN. I'd say that it would seem to me that those summaries would have the same limitations as what I had said for the specific depositions. I don't see the reason for a difference there.

Mr. CHERTOFF. So you would agree with me that the restriction ought to apply to both?

Mr. BENTSEN. Certainly would seem to me that it should.

Mr. CHERTOFF. Now, let me deal with the issue of the edits. Did you direct that the members of the General Counsel's Office participate in editing or reviewing the draft Inspector General's report before it went up to the Office of Government Ethics?

Mr. BENTSEN. I would expect that the Inspector General would utilize all the resources they could for information developing and to verifying information, amongst those I would think would be the General Counsel's Office.

Mr. CHERTOFF. Well, is it you're under—I am not asking you to speculate about what the Inspector General may or may not have agreed to or known, what I am asking is whether——

Mr. BENTSEN. Let me tell you, you have been asking me to speculate all morning.

Mr. CHERTOFF. I am asking you what you remember and what you know and maybe there are things that happened that you didn't know about.

My question is did you direct members of the Office of General Counsel, including people who were working directly for those being investigated, to become involved in the process of reviewing the draft report, looking at the transcripts of all the witnesses' interviews and making comments on it? Or did you know that they became involved in the process?

Mr. BENTSEN. I would have certainly expected them to support anything the IG wanted in the way of further information, and verification.

Mr. CHERTOFF. Did you know——

Mr. BENTSEN. In a supporting role to the IG with the IG making the determination of what they would take and what they would not take.

Mr. CHERTOFF. So you would agree with me that it was absolutely up to the Inspector General to decide when those transcripts ought to be released to somebody to look at——

Mr. BENTSEN. No, that is a different deal. That is a different question.

Mr. CHERTOFF. So, in other words, your view was that the transcripts within Treasury could be shown to witnesses or could be shown to people in the General Counsel's Office, regardless of whether the Inspector General knew about it or approved it? See what I am trying to get here, Mr. Secretary, is a simple question, who controlled the investigation?

Mr. BENTSEN. IG.

Mr. CHERTOFF. The Inspector General had control?

Mr. BENTSEN. That's correct.

Mr. CHERTOFF. That was your order?

Mr. BENTSEN. That's right.

Mr. CHERTOFF. I take it from that that your belief was the Inspector General ought to make the decision about who in the Treasury got to see the transcripts and when they got to see the transcripts?

Mr. BENTSEN. Well, after these things were completed, and their investigation was completed, I did not think it was then their determination.

Mr. CHERTOFF. What about during the period of time the Inspector General's Office was conducting the depositions, early in July, was it your view that the transcripts ought to be circulated in the Office of General Counsel while the investigation was going on?

Mr. BENTSEN. Oh, that's—that never came to me.

Mr. CHERTOFF. You are not aware of that happening?

Mr. BENTSEN. No.

Mr. CHERTOFF. Finally, let me just ask one last question. You've indicated to us, Mr. Secretary, that as of the time that the transcripts were turned over to the White House, which was around July 23, a Saturday, you believed that the investigation was completed; was that your recollection?

Mr. BENTSEN. That's correct.

Mr. CHERTOFF. It was on that basis that you think it was appropriate to turn those transcripts——

Mr. BENTSEN. I thought all the depositions had been taken and—but I found out later that Gene Ludwig's had not and the Office of Government Ethics then asked for that but in no way did that, as I understand it, impinge on the other testimony.

Mr. CHERTOFF. But here is the question that I have. The very next week this Committee which was then examining the same issue asked to get copies of the same transcripts. Mr. Knight, who was your Executive Secretary, directed or at least conveyed a very strong hint, shall we say, to the Inspector General that the Inspector General, and this was under your name, this was on your behalf, that the Inspector General should not turn over transcripts to the Senate because as of July 27, the inquiry was not complete.

In fact, I will help you out. I know we have given you this document, but maybe we can put it on the Elmo, 06098. This is a letter written by or a memo written by Mr. Knight 4 days after the documents were turned over to the White House. I am just trying to get a sense of when the investigation was truly regarded as complete, and I think you have a copy of this in front of you.

I think what—if you read this, what Mr. Knight says is, in substance, that—and he is using your name in this, that he believes the transcripts of witness interviews should not be released until the report is finalized, and that the report was not considered final on July 27, so my question is this: Why were the depositions and investigations sufficiently final on Saturday, July 23 to turn over to the White House, and yet not sufficiently final to be turned over to the Senate 4 days later when the Senate asked for the same material?

Mr. BENTSEN. I assume that's because Cutler had not completed his investigation.

Mr. CHERTOFF. So you were holding up turning over the product of your investigation until Mr. Cutler completed his investigation?

Mr. BENTSEN. I would have to go back and check that.

Mr. CHERTOFF. You don't remember seeing this memo?

Mr. BENTSEN. No, I certainly don't.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator SARBANES. Mr. Secretary, I don't like you being led into these traps and pitfalls. They are working very hard at it but that memo reads that none of the transcripts of witness interviews conducted in the course of your investigation should be released outside of the Executive Branch, until your report is finalized and the Office of Government Ethics has provided the Secretary with its opinion.

Now, we can get into an argument here about legislative and executive prerogatives and protocol, but there is nothing in this memo that seems to me to raise any other issue other than possibly that one, and that's an arguable issue.

It is my understanding that on the 22nd, you received the draft report from the Inspector General, and that the depositions were turned over following that. In other words, the following day——

Mr. BENTSEN. You are talking about July? Yes.

Senator SARBANES. When you shipped the depositions over, while you did not actually have the final report, you had the sort of draft final report and it was only after that that the depositions were sent over; is that correct, that you recall?

Mr. BENTSEN. To the best of my memory, that's correct.

Senator SARBANES. Well, we have a good document trail here I think that supports the view so it seems to me that—I mean, I don't quite see what point's being made here today. It seems to me that nothing occurred to impact on the investigation itself. I quoted at some length from the deposition of Mr. Cottos, the Assistant Inspector General for Investigation at the Treasury, to that effect, notes Cottos has to be filled in before. Nothing has been brought out here that alters that in any way.

Mr. BEN-VENISTE. Mr. Secretary, if I may.

With respect to Mr. Cutler's requests of you, to the extent that anybody not familiar with the minute details of all of these transactions might be misled, is it not the case that Mr. Cutler never asked you to enter into some silent conspiracy where you would give your assent to his request, to get this information?

Mr. BENTSEN. He wouldn't ask that and I wouldn't do it.

Mr. BEN-VENISTE. He never asked you to keep silent or secret his conversation with you about this?

Mr. BENTSEN. No. That's right.

Mr. BEN-VENISTE. Indeed, according to our records, on June 30, 1994, Mr. Cutler announced to the press that he was going to make or had made just such a request, to get all the information that he could get, that would help him to satisfy his obligation to the President and then derivatively to the Congress to be as informed as possible on these facts.

Mr. BENTSEN. Fair enough. He should.

Mr. BEN-VENISTE. According to the report of that press conference, Mr. Cutler stated we will be coordinating with the Treasury Inspector General with respect to interviews and exchanges of factual information on the Treasury side and the White House side, and this is June 30, 1994.

Finally, Mr. Cutler, according to our records, in his testimony before the House of Representatives, the House Banking Committee, on July 26, 1994, reiterated that he had made such requests and had engaged in such exchanges of information. After all, wasn't the White House making all of its employees, records, and documents available to the Inspectors General?

Mr. BENTSEN. Absolutely. We were so advised that they had been very cooperative.

Mr. BEN-VENISTE. Did you have any reason then or now to suspect that the White House was not being completely cooperative with your investigation?

Mr. BENTSEN. That's one of the reasons I agreed to send the depositions over to them, and to save them the time in having to depose all these witnesses because they had to have the information to come before the Congress.

Mr. BEN-VENISTE. It is our information that Mr. Cesca, the Acting, I guess, Deputy—I guess he was Deputy Inspector General and Acting Inspector General at the time, made the determination to send those transcripts over, so it was a decision made by the Inspector General's Office, as we understand it.

The CHAIRMAN. That's in contention, Counsel.

Mr. BEN-VENISTE. That was Mr. Cesca's testimony.

The CHAIRMAN. I think that's a point of contention, but go ahead.

Mr. BEN-VENISTE. Moreover, with respect to the summaries, and I recall distinctly that the plural was used, it is my recollection from the testimony that has been developed before this Committee, so as not to mislead you, sir, or create a false impression that there was one summary sent over to one attorney during this period of time.

Mr. BENTSEN. Thank you.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. I think we are pretty close to closing this up. I know Senator Mack has an observation. I would like to make an observation.

Mr. Secretary, when I read the letter which you have before you, which you have referred to, July 23, 1994, it is quite clear there are specific limitations that are placed on the transmittal of the IG's report to the White House. I think it is important—I am going to read part of it, and this correspondence is to Jane Sherburne, Esquire, Office of the White House Counsel, and is sent to her by Stephen J. McHale, Deputy Assistant General Counsel at Treasury.

He says, "As we have discussed, we are providing this to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing to you with this letter"—I think this is important—"will not be disclosed publicly, or shown to individuals other than Mr. Cutler, who may be called as witnesses by either Committee.

"Similarly, you have agreed not to disclose these transcripts to Counsel for any such individuals. Please let me know immediately if our understanding of our agreement is not correct."

It is quite specific and you have gone to great lengths to handle this correctly and appropriately, but we know of at least one of the summaries that was sent 3 days later to a counsel for a member of the White House, who testified before us, and that's why some of us are deeply concerned.

When I read this, your limitations were quite explicit. Reasonable people may or may not agree on who made that determination, I understand. If you listened—and you have been in this for a long time—to the testimony of witnesses and we know of at least one and who knows how many more instances of the tailoring of it and I say "the tailoring of it," having witnesses say wait until you hear so and so, what he is going to testify to, which was quite different than what he had testified to previously, it is incredible, and this business about, well, they testified before the Special Counsel.

I mean, the fact is we don't have access to that testimony, nobody has access to that testimony, and certainly we don't have access to Grand Jury testimony, but that's one of the things that is upsetting. The fact is that this happened in at least one instance that we are aware of.

Senator Sarbanes.

Mr. BEN-VENISTE. Mr. Chairman, I think that inadvertently you indicated that the witness whose—who was the recipient of that summary.

The CHAIRMAN. I think it was the attorney for the witness.

Mr. BEN-VENISTE. The attorney for the witness was not a witness, sir, who testified before this Committee.

The CHAIRMAN. The individual was a potential witness and certainly the summary should not have been sent to any other outsider, none whatsoever, and I am not going to quibble over that, but the conditions of the letter were not followed. Given the testimony of witnesses who were here before—and I remember quite clearly Senator Domenici and others were upset over the very carefully crafted testimony of witnesses before this Committee who, in some instances, literally contradicted testimony that they had given previously.

Mr. BENTSEN. If I might for a second.

The CHAIRMAN. Sure.

Mr. BENTSEN. I think maybe you had left the room for a moment, Mr. Chairman, but I specifically read those instructions again into the record here because I think they are quite clear and quite explicit.

The CHAIRMAN. They are and I commend you, Mr. Secretary, and again, I think that while there might be agreement or disagreement as to your decision, that's a decision you made, you took it, frankly, straight on, you didn't say it was anybody else's but even with those restrictions, we know of at least one instance within several days when the restrictions were not adhered to, and we thank you.

Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

I want to focus on a different part of this issue that has to do with the independence of the Office of Government Ethics because frankly the report was kind of waved around here at the earlier hearing as kind of a shield, stating, you know, this independent investigation, by an individual, Steven Potts, who was appointed by the Bush Administration, therefore, everything that's in this, you guys just ought to back off, nobody has done anything wrong. I mean, the implication is that, again, since it is the Office of Government Ethics and independent, that therefore we can just rely on the conclusion.

I am under the impression that the Office of Government Ethics is not an investigative body; is that correct?

Mr. BENTSEN. That's correct.

Senator MACK. That I assume is the reason that the Inspectors General were tasked with the gathering of the information?

Mr. BENTSEN. That's right. I wanted them to have everything they could to get the information they needed.

Senator MACK. What troubles me is that Francine Kerner, a member of the General Counsel's Office of the Treasury, was tasked with the responsibility under the Inspector General of the Treasury to gather this information, and——

Mr. BENTSEN. Senator, I think they went to every source they could.

Senator MACK. No, no, no. I think this is not a question of somebody going to a source. This is a person that was responsible for seeing that sources were asked to participate, that is a person who had a major role in the development of this report.

Mr. BENTSEN. My understanding, she was transferred to the IG and was under their surveillance and under their administration.

Senator MACK. Where was she transferred from?

Mr. BENTSEN. From General Counsel's Office.

Senator MACK. We are also now privy to information that again, the Inspector General accepted that with the understanding that there would be no more communication between Francine Kerner and the General Counsel, and we know that that is not the case.

Mr. BENTSEN. That I don't know.

Senator MACK. I am not suggesting that you do. Let me make that clear. But that leads me to this point. Again, we do have information now that there were conversations, this person was involved in the so-called editing of the report, and I might add as well that during the process of this editing they had available to them in the General Counsel's Office the depositions, so here you had the General Counsel's Office, an individual who had been transferred to the IG with the stipulation there would be no—in essence, no more contact with the General Counsel, sitting down in the General Counsel's Office reviewing the report that was going to be made with depositions, does that strike you as maybe undermining the independence——

Mr. BENTSEN. No, no, it does not. It certainly doesn't.

Senator MACK. You don't think——

Mr. BENTSEN. Let me respond to you.

I think the IG has the responsibility to evaluate all of this, to use every source they can to get the information they need. That's what they have to do and—you dismissed Steve Potts. I don't dismiss him. I think he is a man of high integrity.

Senator MACK. Don't try to shove this off on him. I didn't make that point at all, not at all.

Mr. BENTSEN. You sort of pushed it off, that we are to accept him without question.

I think that—I did not know of a more independent agency I could go to. I wanted to get to the bottom of it.

Senator MACK. That is not the question. The question is, about the information that was given Mr. Potts, whether that was in fact independent. What I am saying to you is that the Inspector General, that is, using someone from the General Counsel's Office that has a relationship with a person who is under investigation, who subsequent to that assignment went back and had further conversations along with the depositions making edits to that report, then that report goes to the Office of Government Ethics, I think in my mind that clearly raises questions about the independence of the information, not of the Office of Government Ethics, but of what in fact came out of Treasury. That is the point that I am making.

Mr. BENTSEN. We don't share the same opinion there.

Senator MACK. I will go back. I didn't say that you were aware of this. What I am asking you about, though, does it not cause some concern now?

Mr. BENTSEN. No.

Senator MACK. To think that this information would have been put together by an individual that, in fact, came from the General Counsel's Office and——

Mr. BENTSEN. I have more confidence in the integrity of these people than apparently you do.

Senator MACK. We are talking about perceptions. You've been in this business a long time and you know what perceptions can do.

Mr. BENTSEN. Wasn't to get to reality. That's what I have been striving for.

Senator MACK. Let me pick up on one other point then.

Until the questioning about what happened, why this report was not available to the Committee, some 4 days after, again, you might have to refresh the exact date but——

Mr. CHERTOFF. July 27.

Senator MACK. July 27, and we were not privy to that because it was not sufficiently completed, and your response to the question by Counsel with—apparently the White House Counsel had not completed his report, which says to me that now this independent report that was going to be going to the—Office of Government Ethics was also going to have input from the White House General Counsel. I really have serious questions about the so-called independence.

Mr. BENTSEN. I don't see that. Input from the White House General Counsel?

Senator MACK. That was the impression I got from——

Mr. BENTSEN. Office of Government Ethics, I don't see that.

Senator MACK. Read this. Make sure we are on the same point.

Mr. CHERTOFF. I think the Senator was referring to a previous answer.

Mr. BEN-VENISTE. Can the witness be provided with the document?

Mr. CHERTOFF. We will get it down.

Mr. BEN-VENISTE. 609.

Mr. CHERTOFF. 06098.

Mr. BEN-VENISTE. What are you quote——

Senator SARBANES. What is the document?

Mr. CHERTOFF. Memorandum from the Deputy Attorney General to Edward Knight, the Executive Secretary and Senior Adviser to the Secretary, subject, Congressional staff requests for witness interview transcripts. It is dated July 27, 1994, which is 4 days after the same transcripts were transmitted to the White House on the understanding that as of July 23 the report of the Inspector General was essentially complete.

Now, 4 days later, Mr. Knight writes to Mr. Cesca the following, and Mr. Secretary, if you would follow along with me:

> I have advised the Secretary that you have received a request from the staff of the Senate Banking Committee for transcripts of your inquiry into the Treasury–White House contacts. Because your inquiry is intended to support the Office of Government Ethics, in responding to the Secretary's request for its opinion, your inquiry cannot be considered complete until the Office of Government Ethics has advised you that it has all of the information necessary to issue its opinion. Accordingly, the Secretary has asked me to inform you that he believes that none of the transcripts of witness interviews conducted in the course of your investigation should be released outside of the Executive Branch until your report is finalized and the Office of Government Ethics has provided the Secretary with its opinion.

So that as of July 27, the report is not final when the Senate asks for it, but as of July 23, it is final when the White House asks for it. I believe that the question that I had asked that Senator Mack was following up on was why was there a different rule of what constitutes a final report for the White House and for the Senate. I believe the answer that we got was that the material shouldn't be turned over to the Senate until Mr. Cutler had completed his investigation.

Senator MACK. Right, and again, my point there is it seems like this independent report——

Mr. BENTSEN. That's the Executive Branch working for the President. I don't see——

Senator MACK. I am raising, Mr. Secretary, the question of the independence of—I just—it strikes me as the same kind of thing that was going on in the General Counsel's Office, with reviewing and editing of the report, and I just raised the question of its independence. That's all.

Mr. BENTSEN. I don't question its integrity.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Secretary, let me say for the record I think you handled this thing in a very professional way.

Mr. BENTSEN. Thank you.

Senator SARBANES. I am quite concerned about the inference in a lot of these lines of questions that have been put to you this morning.

Now, you know, in fact, the Deputy Inspector General, with respect to Ms. Kerner, moved her out of the supervision of the Office of General Counsel and put her under the Inspector General.

Mr. BENTSEN. That's correct.

Senator SARBANES. First of all, he said in this memo:

It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

He then went on to say, this is the Deputy Inspector General this is a memo to the General Counsel:

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

Then later, close this out by saying:

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review.

So it seems to me that every step along the way, you were trying to define it in a way to ensure a full and independent inquiry, and obviously the people who conducted the inquiry believe that's what happened. Because I quoted earlier from the deposition of the Assistant Inspector General in fact at another place in the record, in his deposition, the question was:

Question: You investigated a wide range of activities?
Answer: Yes.
Question: Are you proud of the results of your investigation?
Answer: Yes, I am.
Question: Did you consider the investigation to have been thorough?
Answer: Yes.
Question: Complete?
Answer: Yes.
Question: Accurate?
Answer: Yes.
Question: Professional?
Answer: Yes.
Question: Do you have any reason to believe that the results of your investigation were tainted in any way by anything that occurred during the course of the investigation?
Answer: Of our actual investigation, no.
Question: Is there any further investigating you would have had done if you had a little more time?
Answer: No.
Question: Is there anyone else you would have spoken with?
Answer: No. We had access to all the witnesses that we deemed necessary. No one restricted us on witnesses, whether it be the White House, Treasury, RTC, everyone we felt we had to interview was made available to us.
Question: Did you receive access to all the documents that you felt you needed access to?
Answer: Yes, we did.
Question: No one tried to impede your access to documents?
Answer: No, they did not.

So, I think you moved on this when the information available to you seemed to require that you move very early, earlier than anyone else, I believe.

Mr. BENTSEN. That's correct, I was the first one to move on it.

Senator SARBANES. In the Executive Branch of the Government, and I accept your testimony this morning that what you were seek-

ing was a full and thorough and complete and accurate and professional inquiry and I think that's what transpired.

Mr. BENTSEN. Thank you, and I certainly concur with that.

Senator BRYAN. If Senator Sarbanes would yield. It is 2 hours after this hearing begins. I don't believe anybody has questioned the propriety of the Secretary's handling of this issue. There may be some difference of opinion after he gave the order to begin, as to the handling of some of the information but nobody has questioned the handling of this by the Secretary himself.

Senator SARBANES. The questions earlier, before the Senator arrived, because the Secretary was questioned on the basis of a memorandum prepared for Lloyd Cutler for a lunch, and material was lifted out of that memorandum suggesting that this was the subject of the luncheon discussion. It then turns out that that memorandum was prepared not for the lunch of the Secretary with Lloyd Cutler but for a meeting that occurred a week later.

Yet the Secretary was subjected to a whole line of questioning this morning, suggesting off of this memorandum, in effect, that you must have been talking about these things that were contained in that memorandum. That memorandum applied to a meeting that happened a week later and had nothing to do with the Secretary.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much.

Lloyd, it is nice to see you.

Mr. BENTSEN. Senator, let me tell you something, once you leave this place——

Senator MURKOWSKI. Go ahead.

Mr. BENTSEN. —I miss my friends but I sure do not miss the process.

Senator MURKOWSKI. Mr. Secretary, obviously we very much appreciate your willingness to come before this Committee and respond to a broad variety of wide-ranging questions and as you served so nobly in this body as well as your tenure as Secretary of the Treasury, from time to time things come up that, you know, you don't necessarily get a satisfactory answer to, and one aspect of your service that has troubled me for some time, since it was one of those issues that an honorable man was nominated for the head of the RTC, Stanley Tate, I think you know Stanley Tate, nominated by the President and then a rather serious number of innuendos and suggestions resulted in Mr. Tate not having formally been given an opportunity by the Senate, the Banking Committee, to have a hearing, which is very, very unusual.

Mr. BENTSEN. That's correct.

Senator MURKOWSKI. Your role was, as mine, I was not a Member of the Banking Committee, but just following it, I found it extraordinary that he would be denied, a Presidential nominee, that he would be denied and as you would recall, he was to head up the RTC. We talk about qualifications and honorable people and Stan, I think, was Chairman of Region 1 of RTC?

Mr. BENTSEN. That's right.

Senator MURKOWSKI. That extensively in Washington—clearly was qualified for the position?

Mr. BENTSEN. I certainly thought so.

Senator MURKOWSKI. He was acting for about 4½ months, I believe, and he was reporting to Roger Altman, as Acting CEO, if I am correct. But, because of his knowledge and, of course, at that time Whitewater was not an issue, I am wondering if you could or would care to fill us in a little bit on just how a person of Stan's integrity and qualifications would receive a Presidential nomination and then be kind of moved out through the back door, so to speak, and never get an opportunity to really make a contribution based on his experience and expertise.

Mr. BENTSEN. Senator, I certainly share your frustration on that one. It was not easy to find somebody to head up the RTC. It was an agency that was in trouble, was in the process of dissolution, it was not some career advancement, I assure you. Mr. Tate had filled a partial responsibility and discharge it well in handling the region, and he had extensive broad experience in real estate, frankly, I thought he was an ideal choice and—I was delighted he was willing to serve, but I could not get a hearing for him for confirmation. I think personalities became involved in that one.

Senator MURKOWSKI. Well, I think the record speaks for itself. I am not going to pursue the line, Mr. Chairman. But I think it's unfortunate, as you pointed out, that all the powers that be could not persuade the Chairman of the Banking Committee to give him a hearing.

Clearly there was perhaps a political reason, but I can only conclude that there was some reservation based on his political affiliation and his intimate knowledge that if in that position, it might provide an individual with extra original knowledge trying to get to the bottom of Madison Guaranty and others, which is a responsibility that you had and, of course, the responsibility of this Committee as we address this ongoing issue.

I gather there is not much more to say about it. It's done and over but clearly an American that was willing to put his time and effort and knowledge to serve and nominated by the President was given an extraordinary runaround in the process.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Let's go back to the letter that Senator Sarbanes had raised with you. It may be that the real issue we're honing in on here, this is a letter of June 27 from Jean Hanson——

The CHAIRMAN. Do you have a copy of that letter?

Mr. CHERTOFF. This is the letter Senator Sarbanes read from earlier. While your counsel is looking, let me say the issue here is that things were going on that you were not aware of at the Department, such as the objection of the RTC Inspector General, such as the way in which things were being handled. I think everybody understands that when you run a large department or large business, you delegate things. But nevertheless, we have to ask you about whether you knew about certain things.

The CHAIRMAN. Would Counsel pause for just a moment? This is a letter that Senator Sarbanes moments ago or a few minutes ago referred to. Why don't you take a minute, refamiliarize yourself with it.

Mr. CHERTOFF. Mr. Secretary, you've had an opportunity to look at the letter?

Mr. BENTSEN. Yes.

Mr. CHERTOFF. The particular paragraph that Senator Sarbanes brought to your attention, which seemed to be very, very important to the Inspectors General, was the agreement here that Ms. Kerner and members of her staff—and Ms. Kerner was part of the Office of General Counsel—will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

So you understand that the arrangement was that if you were going to have a lawyer from Ms. Hanson's own office working on this, she had to be absolutely separated from everybody else in the Office of General Counsel in terms of reporting or talking about the substance of the inquiry.

I think the problem that's arisen, and Senator Mack talked about it earlier, is that there's a considerable body of evidence that Ms. Kerner was in fact furnishing copies of the transcripts to the other members of the Office of General Counsel, was consulting with other members of the Office of the General Counsel in terms of having them review the draft report, all of which appears to have been her—a decision she made or that was made without authorization of the attorney—Inspector General and an apparent violation of this agreement.

My question to you, Mr. Secretary, is this. Did you know or did anybody inform you at the time that Ms. Kerner was doing things and communicating——

Mr. BENTSEN. No.

Mr. CHERTOFF. Let me finally turn to——

Mr. BENTSEN. My understanding, as I read this, I would not think that would preclude her from requesting information.

Mr. CHERTOFF. I am not talking about requests for information. Everyone agrees that's appropriate. I am talking about giving information, not asking for it, giving it.

My last question is about the issue of who made the decision and who was consulted in turning over the documents to the White House. My understanding, from your testimony here and the answers to questions, is that it was your impression that the Inspector General had been consulted about the propriety of turning these depositions over——

Mr. BENTSEN. Frankly, I should not make a supposition. I don't know.

Mr. CHERTOFF. Well, I have to remind you, Mr. Secretary, of your—do you have a copy of your testimony from last year before you? I will get you a copy. It's page 20. What I will even do is I will give you a highlighted copy of my own. August 3, page 20. This is one example.

The CHAIRMAN. Why don't you wait until you get this copy because it's highlighted and it will take you specifically to the section.

Mr. BENTSEN. Thank you.

Mr. CHERTOFF. You give an answer to Senator Bond's question, I'll direct your attention.

Mr. BENTSEN. Apparently I did.

Mr. CHERTOFF. I will help you out, direct your attention to the middle of the page, there's a long answer and you discuss the turning over of the depositions to Mr. Cutler, and then I'm particularly interested in the last paragraph where you say: "Now let me say further that I asked the IG about the propriety of it, to be sure of that regard."

Mr. BENTSEN. Apparently I did.

Mr. CHERTOFF. So you recall doing that or, at least, being informed that there had been a consultation with the Inspector General?

Mr. BENTSEN. I apparently did.

Mr. CHERTOFF. The problem we're having is this. The Counsel to the RTC Inspector General flatly objected to turning over any transcripts and didn't learn about the transcripts being turned over until she found out about it from watching television.

Mr. BENTSEN. Let me tell you, that was my decision. I have said that.

Mr. CHERTOFF. But the issue again is related to consulting the Inspector General. Here you seem to indicate it was your understanding that the Inspector General had been consulted about turning over the documents. I am trying to reconcile that with the RTC——

Mr. BENTSEN. Which one of the Inspectors General are we talking about?

Mr. CHERTOFF. Let me address both of them.

The Counsel to the RTC Inspector General has testified to us that she objected to it and was never consulted about it. The Treasury Inspector General said in his testimony that he was consulted about it on Saturday and came to the conclusion on Saturday evening around, somewhere between 6 p.m. and 7 p.m. on July 23 that it would be OK, that he would agree to it. Not that he had requested it but that he would agree to it, and yet it appears from other evidence that the documents were actually turned over before the Treasury Inspector General reached his decision, that in fact they were packaged that morning and taken over to the White House by some of your subordinates in the afternoon. So again, is this something you were aware of or is this something that's new to you here?

Mr. BENTSEN. The timing, no, I wasn't aware of the timing.

Mr. CHERTOFF. The fact that it occurred before either Inspector General had approved?

Mr. BENTSEN. No, no, if that's the case, no, I did not know that.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. We have no further questions. Mr. Secretary, I want to thank you for coming in.

Mr. BENTSEN. Thank you.

The CHAIRMAN. Well, I want to thank you for your forthrightness because I do believe that you have testified not only to the best of your ability but in a very straightforward manner. I also believe that given the information that we have, that certainly you don't have all of it nor should you, nor could you even if you had it at your disposal, reconcile differences in terms of what your understanding was and things that took place with, and in some cases,

without your knowledge. So I think the record is clear, though, that there was in at least one instance the dissemination of a summary to a potential witness that was—the counsel to potential witness, that was absolutely inappropriate and went beyond what your letter had authorized; but again I think it is only fair to say, I think at least one of my colleagues, if not a number of them, deeply appreciate your testimony, your forthrightness, and your candor.

Mr. BENTSEN. Thank you very much, Mr. Chairman.

Senator MURKOWSKI. If I could make a point, Lloyd, I very much appreciate your comments on Stanley Tate, and I think that goes a long way to make Mr. Tate feel at least that he had made an effort and was willing to make a contribution. It is kind of an extraordinary set of circumstances that both you and the President who nominated him could not prevail on the powers that be but that's the way some things happen in Washington, DC.

Mr. BENTSEN. Sometimes it's pretty tough to serve.

Senator SARBANES. Mr. Chairman, I would like to make just a couple points for the record. First of all, I think the Secretary ought to know that Mr. Cutler in his deposition said he did not provide the transcripts to anyone.

Now, there's a question about summaries. Apparently, that may have occurred in one instance to a witness who was not called, so there's some argument about whether that material ought to be furnished. I mean, some assert that it ought to be in the process of trying to have a complete investigation.

After all, the people have been deposed and they're on the record and you're trying to find out what happened. You're not trying to play a game to catch people out, I assume, not a gotcha game.

But in any event, Cutler's testimony in depositions here is that none of the transcripts were furnished to others. There's some argument now about this summary, but in any event, that was for a witness who was not called.

I want to thank you very much for your forthright testimony this morning, despite the fact that on more than one occasion you were questioned on the basis of faulty premises.

I have sat here and watched this and tried on occasion to intervene because I thought what was being done was terribly unfair to the witness, to put a line of questioning to the Secretary on the basis of a memorandum which supposedly applied to a luncheon he had and then discover that that memorandum applied to a completely different meeting a week later with which the Secretary had absolutely nothing to do, I think is just some indication of some of the process we've gone through this morning, and as usual, the Secretary has handled it in an unflappable and professional way.

I also want to underscore again that I think the responses that were given to the questions were appropriate. I don't see how the questions that were submitted to the Treasury and which were answered could have been answered—I mean a big to-do was made in here this morning because the questions required—the answers were provided on behalf of the Department, not Secretary Bentsen personally.

Mr. Chairman, it seems to be obvious that on some of these questions—well, let me just quote one:

During his Treasury and Resolution Trust Corporation deposition, John Bowman was shown a document numbered 5658. From whose file was this document obtained? Was this document produced to the Committee? Are there other copies of this document in Treasury personnel files? If there are other copies of this document, why were they not produced to the Committee?

Now, I mean to expect the Secretary personally to answer that question, I think, is ridiculous, and the response that was given from the Department of the Treasury was an appropriate response.

Mr. BENTSEN. Thank you.

Senator SARBANES. I close by thanking the Secretary for coming. I know it disrupted his plans but we appreciate your testimony.

The CHAIRMAN. Mr. Secretary, thank you very much for coming. Deeply appreciate it.

Mr. BENTSEN. Thank you, Mr. Chairman.

The CHAIRMAN. We are under some time constraints and in an effort to move along, I'm going to ask that our second panel come forward. John Adair, Inspector General of the Resolution Trust Corporation; Clark Blight, Assistant Inspector General of the RTC; Steven A. Switzer, Deputy Inspector General; and Patricia Black, Counsel to the RTC Inspector General.

We have a very exhaustive and busy schedule. The Chairman intends to keep these hearings moving so that we can complete our task as expeditiously as possible. Some circumstances beyond our control will necessitate obvious delays, so unless we continue pushing forward, we will encounter a situation where we will not have completed our work or hearings drag out and we are accused of running into the political season.

The political season is already here, but to the extent that I can, I really believe it is important that we move these hearings and do the job as thoroughly, as fairly, and as expeditiously as possible. Could we get the witnesses up?

May I ask you all to stand for the purposes of having the oath administered.

[Whereupon, John Adair, Patricia Black, Clark Blight, and Steven A. Switzer, were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Let me start with Mr. John Adair and work right across. If you have any statement that you would like to give to the Committee for the record, we would be delighted to receive it.

We would like to thank you for your cooperation, for being here today and for your cooperation with the Committee staff.

With that I will turn to Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Mr. Adair, you are a statutory independent—Inspector General; am I correct?

SWORN TESTIMONY OF JOHN ADAIR, INSPECTOR GENERAL OF THE RESOLUTION TRUST CORPORATION

Mr. ADAIR. Yes.

Mr. GIUFFRA. You cannot be removed as Inspector General by the CEO of the RTC?

Mr. ADAIR. That's correct.

Mr. GIUFFRA. You don't generally report on the substance of ongoing investigations to the CEO of the RTC?

Mr. ADAIR. Generally correct, that's right.

Mr. GIUFFRA. You don't report on the substance of ongoing investigations to the General Counsel of the RTC?

Mr. ADAIR. No.

Mr. GIUFFRA. Now, sometime in March 1994, you learned that Secretary Bentsen had asked the Office of Government Ethics to examine Treasury–White House contacts regarding Madison; am I correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. You learned at some time in the spring of 1994 that the RTC IG and the Treasury IG would participate in this investigation?

Mr. ADAIR. That's correct.

Mr. GIUFFRA. You learned that you would be participating because the Office of Government Ethics did not have an investigative capacity; is that correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. You understood that the OGE would rely on the results of your investigation to issue a report on the propriety of White House–Treasury contacts?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Now, did you understand that Secretary Bentsen wanted you to conduct an independent investigation?

Mr. ADAIR. Yes.

Mr. GIUFFRA. You understood that the investigation would not be an independent one if it was conducted by the Office of General Counsel of the Treasury Department?

Mr. ADAIR. That's correct.

Mr. GIUFFRA. Because one of the subjects of the investigation was the General Counsel of the Treasury Department?

Mr. ADAIR. Yes.

Mr. GIUFFRA. You also understood that the investigation would not be independent if it was conducted by the White House Counsel's Office?

Mr. ADAIR. I think that's true, yes.

Mr. GIUFFRA. The White House Counsel is not a statutory Inspector General; right?

Mr. ADAIR. Right.

Mr. GIUFFRA. Your investigation was delayed for some time, I believe until June 30, 1994, because of concerns expressed by then Independent Counsel Fiske. Am I correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Am I also correct that Secretary Bentsen wanted the OGE to issue its opinion prior to the Senate and House hearings that would commence toward the end of July 1994; is that correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Now, there was concern among some at the RTC IG's Office about your ability to complete your investigation within that 1-month timeframe; is that correct?

Mr. ADAIR. Yes, there was.

Mr. GIUFFRA. Ms. Black, I believe you were concerned about the Inspector General's ability to complete the investigation within that 1-month time period; am I correct?

SWORN TESTIMONY OF PATRICIA BLACK
COUNSEL TO THE INSPECTOR GENERAL
OF THE RESOLUTION TRUST CORPORATION

Ms. BLACK. We were all concerned about whether that was doable.

The CHAIRMAN. Ms. Black, would you speak into the microphone, please.

Ms. BLACK. I said yes, we were all concerned about that.

Mr. GIUFFRA. Ms. Black, you are the Counsel to the RTC IG; is that correct?

Ms. BLACK. That's correct.

Mr. GIUFFRA. During this period you attended numerous meetings with representatives of the Office of Government Ethics, the Treasury IG, and the White House during the investigation; is that correct?

Ms. BLACK. That's correct.

Mr. GIUFFRA. During the investigation you worked closely with Francine Kerner?

Ms. BLACK. Yes.

Mr. GIUFFRA. Who is Francine Kerner?

Ms. BLACK. Francine Kerner was the Counsel to the Treasury Inspector General.

Mr. GIUFFRA. So Francine Kerner was your counterpart at the Treasury IG?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Now, ultimately, did you become concerned about Francine Kerner's independence?

Ms. BLACK. I had concerns because she was located organizationally within the Office of General Counsel and this was an investigation of the highest ranking members of that office.

Mr. GIUFFRA. You understood that she reported to Ms. Hanson ultimately?

Ms. BLACK. Ultimately.

Mr. GIUFFRA. To Mr. Foreman, who was the Deputy General Counsel of the General Counsel's Office at the Treasury?

Ms. BLACK. He was also in the chain of command.

Mr. GIUFFRA. They were subjects of your investigation?

Ms. BLACK. Mr. Foreman was at least a critical fact witness. Ms. Hanson was a subject.

Mr. GIUFFRA. Did you become concerned that Ms. Kerner was transmitting confidential investigatory information to members of the Treasury Department General Counsel's Office?

Ms. BLACK. During the course of the investigation, I did not believe that to be true.

Mr. GIUFFRA. Have you subsequently learned that Ms. Kerner was transmitting information to members of the Office of General Counsel of the Treasury Department?

Ms. BLACK. I have since seen evidence that indicates that, yes.

Mr. GIUFFRA. Have you since learned that she communicated with Mr. Kenneth Schmalzbach, who is an Assistant General Counsel in the Office of General Counsel of the Department of the Treasury?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Do you have a belief that Ms. Kerner also spoke to Mr. Foreman?

Ms. BLACK. I don't know about that.

Mr. GIUFFRA. Were you concerned about the fact that Ms. Kerner was speaking with members of the Office of General Counsel?

Ms. BLACK. At the outset of the investigation, I had numerous conversations with Ms. Kerner, and that may be what you are referencing with regard to Mr. Foreman. There were conversations that indicated a continual contact between Ms. Kerner and members of the General Counsel's Office, which was of some concern to me. That was before our investigation actually started, though.

Mr. GIUFFRA. Mr. Blight, in your deposition I believe you testified that at the outset of the investigation, it appeared to you at least that Ms. Kerner was an "advocate for the White House." Do you recall that testimony?

SWORN TESTIMONY OF CLARK BLIGHT
ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS
OF THE RESOLUTION TRUST CORPORATION

Mr. BLIGHT. Yes.

Mr. GIUFFRA. Why was Ms. Kerner in your view an advocate for the White House?

Mr. BLIGHT. Well, we had a meeting, I think it was around July 5, in Mr. Cesca's office, and there was a discussion about how we were going to deal with the White House witnesses and just interviews in general, and there was some—she seemed to be in favor of—as I understand it, she had been in contact with one of the members of Mr. Cutler's staff and seemed to be advocating that the White House's position is that they would like to have one of their lawyers present at the interviews that we were conducting.

Mr. GIUFFRA. Mr. Adair, did you express concern to Mr. Cesca, who I believe was the Deputy Treasury IG, and, in effect, the Acting Treasury IG, with regard to Ms. Kerner's involvement in this investigation?

Mr. ADAIR. Yes, I did. I called him early in June, I think around June 2, and suggested that perhaps he would be willing to accept my Counsel, Patricia Black, as the Counsel for both of us and remove Francine from the investigation, since she was an employee of the Office of General Counsel, and I thought that certainly gave a bad appearance for our investigation.

Mr. GIUFFRA. That was because the investigation was centered in part on Ms. Hanson?

Mr. ADAIR. The General Counsel, that's correct.

Mr. GIUFFRA. Now, ultimately, was there an agreement reached with regard to the setting-up of a Chinese wall between Ms. Kerner and the Office of General Counsel?

Mr. ADAIR. Yes, there was. Mr. Cesca's memorandum to Jean Hanson, which I believe has been referred to earlier today, was arranged with the Counsel, that Francine would be walled off from the Counsel's Office.

Mr. GIUFFRA. Mr. Blight, do you have a belief as to whether Ms. Kerner violated this Chinese wall agreement?

Mr. BLIGHT. Well, I believe—well, I believe she did, yes.

Mr. GIUFFRA. Do you believe that she provided information to Mr. Schmalzbach in violation of the agreement?

Mr. BLIGHT. Yes.

Mr. GIUFFRA. Mr. Schmalzbach was an Assistant General Counsel in the General Counsel's Office?

Mr. BLIGHT. Correct.

The CHAIRMAN. Hold on now. Tell me about this violation, if you might. Can you be a little more specific? What was your concern about the so-called wall being pierced?

The idea that a Deputy Counsel in the Counsel's Office could be the Counsel for the IG where the General Counsel is the primary subject, is absolutely inappropriate. Our distinguished staff may understand the intricacies of the situation, but this is the first time I have heard of this and I'm not only upset, I'm disturbed. In fact, we should have had these witnesses in the first panel instead of the second panel so that we could have gone over how this happened.

No. 1, to suggest that you can have someone who is working for the very person being investigated play an integral role in the investigation and think that you're going to build a Chinese wall doesn't make sense. I mean, the whole undertaking was tarnished from the start. It should not have taken place.

No. 2, I don't know who the IG was at the time who permitted that, whether it was Cesca or someone else, but I would like to understand how that took place.

No. 3, In addition, Mr. Blight, I would like you to be a little more specific in your response to the question by Mr. Giuffra in which he indicated what bothered you as it related to this particular individual.

Mr. BLIGHT. I think when I gave my deposition, that the response I gave was based on information that Ms. Black had provided to me. She can provide it more directly.

The CHAIRMAN. Ms. Black, would you care to enumerate on that?

Ms. BLACK. I believe what Mr. Blight is referring to——

Senator SARBANES. Mr. Blight is the one who made the characterization.

The CHAIRMAN. That's right, but Mr. Blight has indicated that this took place and that Ms. Black had provided him with information that led him to that conclusion. Now I'm going to ask Ms. Black to enumerate the facts that she told Mr. Blight that led him to that conclusion. This is not a court of law, and we are going to get to the facts. Ms. Black, what facts was it that disturbed you that you brought to Mr. Blight's attention?

Senator SARBANES. Now, Mr. Chairman, Mr. Blight expressed an opinion.

The CHAIRMAN. Yes.

Senator SARBANES. Mr. Blight ought to give us the factual basis for that opinion.

The CHAIRMAN. He did.

Senator SARBANES. No.

The CHAIRMAN. Oh, yes, he did.

Senator SARBANES. Then if we want to hear from Ms. Black on her view, we should. But Mr. Blight should not pass off his factual

basis to Ms. Black. I want to know what Mr. Blight thought that led him to make that characterization.

The CHAIRMAN. I'm going to reclaim my time, but in the spirit of cooperation it is proper to ask Ms. Black these questions. Mr. Blight indicated that he came to a conclusion, and we'll go back to him, based upon information that was given to him by Ms. Black. So, that's why I'm asking Ms. Black about the information that she gave him.

Senator SARBANES. We ought to hear from Mr. Blight.

The CHAIRMAN. He just told you.

Senator SARBANES. Wait a minute. His impression of what Ms. Black may have told him may differ from what Ms. Black will tell us, so Mr. Blight is the one who made the judgment. We ought to hear from him why he made that judgment.

The CHAIRMAN. Your line of questioning would be absolutely appropriate if it were on your time, but it's not. I choose to go right to the source and ask the source. She made observations.

Did there come a time, Ms. Black, when you made certain observations about the potential problem to Mr. Blight?

Ms. BLACK. Yes, I did.

The CHAIRMAN. Would you tell this Committee what it was and what facts you shared with Mr. Blight.

Ms. BLACK. Yes, that occurred in February of this year, well after the close of the investigation.

I had a meeting with the Independent Counsel's Office and at that meeting they were asking me questions about these events as well. During the course of that meeting, I was shown an E-mail that originated in the Department of the Treasury. That E-mail was dated July 28, at approximately 10:43 a.m., I think. It was an E-mail from Mr. Schmalzbach to Mr. Knight where Mr. Schmalzbach described a phone call that he had received from Ms. Kerner which described in turn what was going on in a meeting between the two Inspectors General that was going on at that time, that morning on the 28th. I was astonished that information from such a meeting was being communicated back to the Treasury General Counsel's Office.

The CHAIRMAN. Since they were the subject of the investigation, at least part of the subject?

Ms. BLACK. Exactly. They were outside the investigative process, in any event, and I was astonished that that information was being communicated outside the investigatory process.

I returned to our office and told Mr. Blight about this and we ordered phone logs from our office to see if calls had in fact been placed, and they were.

The CHAIRMAN. And they were?

Ms. BLACK. They were.

The CHAIRMAN. Mr. Blight, that's what disturbed you?

Mr. BLIGHT. Yes, it did.

The CHAIRMAN. Counsel, if you care to proceed, go ahead.

Mr. GIUFFRA. Now, Ms. Black, in the initial phase of your investigation, did the White House ask to have its lawyers present at depositions, including depositions of non-White House personnel?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Did you express the strong opposition of the RTC IG to allowing White House lawyers to sit in on depositions?

Ms. BLACK. Yes, I did.

Mr. GIUFFRA. Why did you express the strong opposition of the RTC to allowing White House lawyers to sit in on depositions?

Ms. BLACK. We were conducting an independent investigation, a fact-finding investigation, and we recognized from the outset of this process, we in the RTC IG's Office, that this was going to be an investigation which would be subject to a great deal of scrutiny by the press, by both Houses of Congress, and we recognized that we had to do it by the book.

We try to do all investigations that way, but certainly this investigation, above all others, had to be done by the book. You don't have outside parties sitting in on your investigative interviews.

Mr. GIUFFRA. That is contrary to your standard method of investigation?

Ms. BLACK. Absolutely.

Mr. GIUFFRA. Did there also come a time, I believe it was on July 5, that the White House requested copies of transcripts of depositions taken in the course of your investigation?

Ms. BLACK. Members of the White House Counsel's Office, yes.

Mr. GIUFFRA. Was that Ms. Jane Sherburne?

Ms. BLACK. Yes.

Mr. GIUFFRA. She worked for Mr. Cutler?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Did you advise Ms. Sherburne that the RTC was very concerned about providing deposition transcripts to the White House?

Ms. BLACK. I advised her we would not agree to that.

Mr. GIUFFRA. You were strongly opposed in fact to providing deposition transcripts to the White House of your investigation?

Ms. BLACK. We were adamantly opposed to the transcripts going outside the investigative circle.

Mr. GIUFFRA. You were concerned about the tailoring of testimony?

Ms. BLACK. I was concerned that it violated our processes, it was not a normal investigative technique and of course, it can affect other witnesses' testimonies if they know what prior witnesses said.

Mr. GIUFFRA. Mr. Adair, did you understand that the White House had agreed to abide by Ms. Black's condition that the transcripts not be provided to the White House?

Mr. ADAIR. When Ms. Black reported back to me about her meeting, she indicated that she had raised these objections and she said that I might be getting a phone call from the White House if this issue was still unresolved.

It was my understanding that it had been resolved in our favor because subsequently the White House did not sit in on any of our interviews, and I also believe that the issue of the transcripts being provided had been decided at that point.

Mr. GIUFFRA. If there had been a change in the agreement, you would have expected to have been consulted; is that correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Ms. Black, that was your understanding, that you would be consulted if the transcripts were sent over to the White House?

Ms. BLACK. That would be my expectation.

Mr. GIUFFRA. Did there come a time that you learned deposition transcripts, including depositions of RTC employees, were provided to the Treasury General Counsel's Office?

Ms. BLACK. Yes.

Mr. GIUFFRA. When was that?

Ms. BLACK. We learned that of a certainty around July 21 or July 22.

Mr. GIUFFRA. Did you learn that the transfer of the depositions to the General Counsel's Office of the Treasury Department had occurred on July 13 or no later than July 13?

Ms. BLACK. I don't know when it happened. I still don't know.

Mr. GIUFFRA. Previous to the 21st and the 22nd?

Ms. BLACK. That's correct.

Mr. GIUFFRA. You were not consulted with regard to the communication of those transcripts over to the General Counsel's Office?

Ms. BLACK. We were not.

Mr. GIUFFRA. You would have wanted to have been consulted?

Ms. BLACK. Yes.

Mr. GIUFFRA. That was contrary to what you thought was the appropriate procedure that had been agreed upon?

Ms. BLACK. That's correct. Again, it's outside the investigation.

Mr. GIUFFRA. Was any explanation ever offered to you as to why you were not consulted?

Ms. BLACK. As to why we were not consulted, no.

Mr. GIUFFRA. Now, on July 26, did you learn that the Treasury Department had provided unredacted transcripts of all depositions, including those of RTC employees, to the White House?

Ms. BLACK. Yes.

Mr. GIUFFRA. How did you come to learn of the transmission of these transcripts to the White House?

Ms. BLACK. That was in a meeting that was held in our conference room in Rosslyn, VA, in our offices between the various senior members of the IG's Offices.

Mr. GIUFFRA. Had someone from the Treasury IG's Office consulted you previously to advise you that they would be providing the transcripts to the White House?

Ms. BLACK. Absolutely not.

Mr. GIUFFRA. You were very upset, in fact, that you were not consulted prior to the communication of these transcripts to the White House?

Ms. BLACK. Yes.

Mr. GIUFFRA. You were, in fact, shocked; am I correct?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Now, Mr. Adair, when you learned of the communication of these transcripts to the White House, weren't you also shocked, sir?

Mr. ADAIR. Yes, sir.

Mr. GIUFFRA. Were you surprised, in fact?

Mr. ADAIR. Very much surprised; somewhat disappointed that we hadn't been consulted on the matter.

Mr. GIUFFRA. Mr. Blight, were you, in fact, shocked when you learned about the transmission of these transcripts over to the White House?

Mr. BLIGHT. Yes, I was.

Mr. GIUFFRA. Your investigation was still open, sir; am I correct?

Mr. BLIGHT. Yes, it was.

Mr. GIUFFRA. In fact, didn't you speak to Mr. Cottos, your counterpart at the Treasury IG, about the communication of these transcripts over to the White House?

Mr. BLIGHT. As I recall, it was shortly before that meeting.

Mr. GIUFFRA. The same day?

Mr. BLIGHT. The same day.

Mr. GIUFFRA. Wasn't Mr. Cottos, who worked at the Treasury IG's Office, also upset about the communication of the transcripts over to the White House?

Mr. BLIGHT. He told me that he didn't know about it either.

Mr. GIUFFRA. So he had been kept in the dark, someone who worked in the Treasury IG's Office?

Mr. BLIGHT. That's what he told me.

Mr. GIUFFRA. OK. Now, were you also particularly upset because you were investigating improper Treasury–White House contacts and, now, here, more information about the investigation was being communicated to the White House?

Mr. BLIGHT. Yes.

Mr. GIUFFRA. So you were doubly concerned, sir?

Mr. BLIGHT. Yes, I mean, this is what the investigation was about, providing information to the White House.

Mr. GIUFFRA. Mr. Switzer, were you surprised and shocked when you learned about the transfer of the depositions over to the White House?

SWORN TESTIMONY OF STEVEN A. SWITZER
DEPUTY INSPECTOR GENERAL
OF THE RESOLUTION TRUST CORPORATION

Mr. SWITZER. Yes, I was.

Mr. GIUFFRA. In fact, the OGE report had not yet been completed, it was an open investigation. Isn't that correct, sir?

Mr. SWITZER. Yes, it was.

Mr. GIUFFRA. Ms. Black, why was the release of the transcripts to the White House inappropriate?

Ms. BLACK. Two concerns. First, the investigation was not complete and as everybody has said, was still open; and the second concern that I had was that the transcripts had privileged information in them. It had, various transcripts had, information concerning the underlying RTC criminal investigation.

Mr. GIUFFRA. They had confidential RTC information relating to the criminal referrals that ordinarily the White House had no right to; is that correct?

Ms. BLACK. That is correct.

Mr. GIUFFRA. That is precisely what you were investigating?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Mr. Adair, are you aware of any case in which an IG of any Government agency would turn over transcripts prior to the conduct of the investigation to the subject of the investigation?

Mr. ADAIR. I am not.

Mr. GIUFFRA. You find that shocking, sir, am I correct?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Is it also true, Mr. Adair, that 90 percent of the substance of your investigation was contained in those transcripts?

Mr. ADAIR. Yes, I would say so. The report was based on, primarily on the contents of the transcripts, yes.

Mr. GIUFFRA. Wasn't there information in those transcripts that even Secretary Bentsen should not have seen?

Mr. ADAIR. I think we are talking about matters involving the criminal referrals, yes.

Mr. GIUFFRA. So that information regarding the criminal referrals should have been redacted from the transcripts that even went to Secretary Bentsen?

Mr. ADAIR. That's correct.

Mr. GIUFFRA. Much less the White House; isn't that right?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Now, am I correct that you spoke with Ms. Kulka, who I believe is the General Counsel of the RTC, about the fact that the White House had obtained the transcripts?

Mr. ADAIR. That's correct. She called me. That day she had seen Mr. Lloyd Cutler testify on the 26th and he made reference to her transcript and she wanted to know how he had come to have her transcript, and I explained that the Treasury IG had released or approved the release of the transcripts.

Mr. GIUFFRA. Wasn't Ms. Kulka very upset?

Mr. ADAIR. Very much upset, and particularly because of the privileged material contained in the transcripts, and she asked that I arrange a meeting with the Treasury IG.

Mr. GIUFFRA. Aren't those transcripts still confidential, sir?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Ms. Black, and did there come a time when you learned that representatives of the Office of the General Counsel to the Treasury Department had commented on the draft OGE report?

Ms. BLACK. Yes.

Mr. GIUFFRA. Were you upset when you learned that?

Ms. BLACK. Actually, it wasn't the draft OGE report, I'm sorry, it was the draft IG report.

Mr. GIUFFRA. Excuse me, yes.

Ms. BLACK. Somewhat upset.

Mr. GIUFFRA. Why were you somewhat upset?

Ms. BLACK. Again, information had gone outside the investigation. Generally—IG's do not normally give a report to a General Counsel's Office or anyone else to comment on.

Mr. GIUFFRA. So that was not consistent with your normal procedures?

Ms. BLACK. No.

Mr. GIUFFRA. In fact, you thought it was questionable to allow someone who worked for Secretary Bentsen to review a draft IG report; isn't that right?

Ms. BLACK. I had some concern about that as well.

Mr. GIUFFRA. Because that would not be the proper procedure?

Ms. BLACK. Correct.

Mr. GIUFFRA. Now, am I also correct that the RTC IG did not investigate what White House officials did with the confidential RTC information?

Ms. BLACK. There were questions asked of the White House officials about that.

Mr. GIUFFRA. You only looked at the contacts between the White House and the Treasury Department; correct?

Ms. BLACK. That was the primary focus.

Mr. GIUFFRA. You didn't look at what the White House did with the information; isn't that right?

Ms. BLACK. There was some attempt to look at a little bit of that information.

Mr. GIUFFRA. But the White House and Treasury IG did not want you to look at what the White House did with that information; is that correct?

Ms. BLACK. The Treasury IG considered it beyond the scope of the investigation.

Mr. GIUFFRA. So you were not able to look into how the information was used?

Ms. BLACK. We asked some questions but they were not answered.

Mr. GIUFFRA. Wouldn't how the information was used be relevant to the state of mind of some of the recipients of the confidential RTC information?

Ms. BLACK. That was our view.

Mr. GIUFFRA. And if someone had obtained information about an RTC referral and contacted, for example, Jim Guy Tucker or Jim McDougal, wouldn't that be relevant to your investigation?

Ms. BLACK. That was our view.

Mr. GIUFFRA. Might it also indicate that the transfer of the confidential information compromised a pending investigation?

Ms. BLACK. The "pending investigation" being the——

Mr. GIUFFRA. Possible criminal investigation that was going to be conducted with regard to the information contained in those RTC criminal referrals.

Ms. BLACK. Quite frankly, sir, that's something the Independent Counsel is looking at and I would defer to him on that.

Mr. GIUFFRA. Ms. Black, do you believe that the White House was cooperative in terms of providing documents to your office?

Ms. BLACK. Yes, I do.

Mr. GIUFFRA. Now, didn't they redact some materials in connection with providing documents to your office?

Ms. BLACK. They did.

Mr. GIUFFRA. Didn't you ask, weren't you concerned to some extent that potentially relevant material might be contained in that redacted information?

Ms. BLACK. Yes.

Mr. GIUFFRA. Some of that might pertain to so-called Arkansas matters?

Ms. BLACK. Well, what we were concerned about was being able to reach some level of assurance that we had gotten all the information that we had requested.

Mr. GIUFFRA. Didn't you, in fact, ask the White House Counsel's Office to provide you with a certification that you had received all relevant information?

Ms. BLACK. Yes, we did.

Mr. GIUFFRA. They never provided that certification; isn't that right?

Ms. BLACK. They did not.

Mr. GIUFFRA. Despite your repeated requests that you receive such information?

Ms. BLACK. That's correct.

Mr. GIUFFRA. Mr. Chairman, I yield the remainder of my time.

The CHAIRMAN. Now, before I turn to Senator Bond, who wants to make some observations, I'm going to make an observation. This panel should have been called first. I find your testimony absolutely shocking.

I was not aware of this, I had no idea. It is very disturbing. It is distressing; and obviously, the integrity of the investigation is compromised if the individuals under investigation are furnished information and told what's taking place. Then the questions about the editing almost become secondary. I have to tell my colleagues that I had no idea that this would be the testimony of this panel.

Obviously, they will be examined so that the totality of the circumstances can be made known to this Committee, and publicly. I doubt if the Secretary was aware of this, I really do. I just don't believe that happened, given the fact that the transmittal letter that I saw, which the Secretary had approved and was aware of, contained those restrictions. I am certain that he would not have permitted the Counsel, someone in the Counsel's Office to play such a role.

Senator Bond.

Senator BOND. Thank you, Mr. Chairman.

I was called out of the room for another matter and I wanted to set the record straight on the characterization by Senator Sarbanes of some of the questions that I asked. He made the point that it was impossible for the Secretary of the Treasury to have knowledge of all of the material supplied, and I understand that, but the reason I questioned the Secretary, because at least three of the questions were directed to the Secretary specifically and asked for his specific response, to wit:

Question No. 4: When were you first provided a draft of the Treasury–RTC report?

Question No. 10: Did you request the Treasury Inspector General to assist the OGE?

Question No. 15: Did you or any other Treasury employee discuss with Francine Kerner, et cetera?

This is why I asked why the Secretary had not responded in person and why it was only on behalf of the Department. I think we're beginning to see why. We will leave that discussion for later.

At the time I misstated that the notes prepared by Ms. Sherburne for Mr. Cutler were for the June 21 lunch. Whether they were prepared for the June 21 lunch or whether they were for a July 1 meeting, which they were provided for, and I corrected it at the time, they reflect very clearly in a contemporaneous document the understandings of Mr. Cutler to which he had referred, and in

his testimony, and I asked the Secretary if that clarified his knowledge.

The July 1 notes included the following, the second page, under a broad heading of what Secretary Bentsen has asked the Office of Government Ethics, at the bottom of the page, the following items: The IG's will proceed jointly by taking sworn depositions of those involved in the contacts. Details are still being worked out. We likely will have transcripts within 24 hours, including transcripts of depositions of Treasury and possibly RTC witnesses after the completion of the depositions of White House witnesses. This is, in fact, a contemporaneous document reflecting at least Mr. Cutler's understanding of the discussions and the agreement that he had with Secretary Bentsen.

Now, Ms. Black, did you know at the time of July 1 that there had been, at least in Mr. Cutler's mind, an agreement that the transcripts would be supplied to the White House within 24 hours?

Ms. BLACK. No, sir.

Senator BOND. Had you known about that agreement, what would you have done? Ms. Black.

Ms. BLACK. Had I known that that agreement existed, first, I would have tried to have it amended, changed, because I don't think, as I said before, that the transmission of those transcripts was appropriate. Failing that, I would have had to have gone to my client and talked to him about whether or not we could continue to be involved in this.

Senator BOND. So you feel it seriously compromised your investigation?

Ms. BLACK. I don't know that that is the case. I believe that it was improper, I believe that it certainly gave an appearance problem. I mean, it was improper in terms of our normal investigative procedures.

Senator BOND. Would you have conducted an independent investigation, independent of the White House, of these matters?

Ms. BLACK. That is one option that we would have looked at.

Senator BOND. That would be in keeping with the normal role and responsibilities and standard operating procedure of the Inspector General?

Ms. BLACK. Yes.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank the witnesses. You are going to have a half hour and we will start with your round. When we come back at 2:05 p.m. and we will turn to the other side.

Senator SARBANES. What about doing it now and then breaking for lunch?

The CHAIRMAN. I want to keep this going and I want——

Senator SARBANES. That would keep us going and move this thing along, we take our turn now and then break for lunch.

The CHAIRMAN. OK. I am going to ask for a 5-minute break because I had intended to stop for lunch, but we will not break for lunch now. If the witnesses need some time, for whatever reason, why don't you take 5 minutes, and then we will come back and it is the intention of the Senator to work right on through. We're going to do this one way or the other but we will come back in 5 minutes and we will start with Senator Bond.

[Recess.]

The CHAIRMAN. I am going to ask staff to contact the witnesses and indicate that we will have lunch and we will resume at 2:15 p.m.

[Whereupon, at 1:08 p.m., the hearing was recessed, to be reconvened at 2:15 p.m. this same day.]

AFTERNOON SESSION

[Whereupon, John Adair, Patricia Black, Clark Blight, and Steven A. Switzer, resumed the stand and, having been previously duly sworn, were examined and testified further as follows:]

The CHAIRMAN. The Committee will come to order. At this time, the Chair recognizes Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Good afternoon, panel. I would like to start with the question that was raised before the lunch break, about what you would do in a normal RTC IG investigation, because it appears to me that this was, for a number of reasons, not a, quote, normal RTC IG investigation.

Let me start with Mr. Adair. Is it not the case that your services were requested to provide assistance to the Office of Government Ethics in its effort to provide a report and opinion to the Secretary of the Treasury?

Mr. ADAIR. That is correct.

Mr. BEN-VENISTE. That is not the normal way your investigations are undertaken; is that correct?

Mr. ADAIR. Correct.

Mr. BEN-VENISTE. So indeed, the idea of an investigation with targets or subjects which you might ordinarily open was indeed not the format of the investigation that you were presented with, was it, Mr. Switzer?

Mr. SWITZER. If I understand what you are getting at, sir, I would like to kind of clarify a bit. I think that when we talk about a normal investigation, I think in terms of how we are conducting that investigation, not necessarily who the end users of the investigation are.

Mr. BEN-VENISTE. But if this investigation was opened for the purpose of providing an opinion by OGE—and OGE did not have trained investigators, did it, Mr. Blight?

Mr. BLIGHT. No, they didn't.

Mr. BEN-VENISTE. You and the Treasury Inspector General's Office were pressed into service to assist OGE; is that correct, Mr. Adair?

Mr. ADAIR. That's correct.

Mr. BEN-VENISTE. Normally, you would not be operating under as truncated a timeframe as you were; that put a lot of pressure on you, did it not?

Mr. ADAIR. Yes, it did.

Mr. BEN-VENISTE. Now, you understood at the same time that you were doing your investigation, Mr. Cutler, Counsel to the President of the United States, had been given an assignment by the President to conduct a White House internal investigation; had he not?

Mr. ADAIR. I believe that Mr. McLarty had asked him to do that, yes.

Mr. BEN-VENISTE. While the subject matter of the investigations, jointly undertaken in terms of time, were approximately the same in subject matter, Mr. Cutler had his obligations to the President

and Mr. Bentsen, as he has testified this morning, had his obligations; correct?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. Now, let me talk about the fundamental issue that was posed so well by Chairman D'Amato this morning, and that is whether individuals might utilize information to tailor their testimony—and by tailoring it, I take it you mean that they would do something untoward; correct?

Mr. ADAIR. I suppose that would be correct. I could defer to Mr. Blight, who is our chief investigator.

Mr. BEN-VENISTE. Don't you know, Mr. Adair?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. It is easier for me, then, to play ping-pong. I will turn to Mr. Switzer in a moment, or Mr. Blight. When you consider whether people are tailoring their testimony, that has a pejorative context to it, that they are testifying to something that is different from their recollections or is not accurate; would that not be the case, Ms. Black?

Ms. BLACK. To use the term "tailored" as you did, with the definition that you provided, yes. It is also certainly possible for a witness to have their recollection influenced quite innocently, though.

Mr. BEN-VENISTE. Right, so that the other side of the picture, is an innocent explanation; correct?

Ms. BLACK. Correct.

Mr. BEN-VENISTE. So, here, if we were to follow Chairman D'Amato's line, we would note that maybe some gradations of difference in terms of seriousness of conduct. One might think that a witness who has given sworn testimony, learning about someone else's testimony, might not be in a position to tailor his testimony to the extent that he would if he had not yet given testimony; would you accept that as correct, Ms. Black?

Ms. BLACK. Certainly, having given prior sworn testimony, it does tend to lock a witness in. One can always have additional recollections. One can become influenced. One can change one's testimony.

Mr. BEN-VENISTE. But then it would be pretty obvious that they were changing the testimony because they had been locked in to sworn and transcribed testimony.

Ms. BLACK. They would have the chance to compare, that's right.

Mr. BEN-VENISTE. If people got together or information were exchanged for the purpose of tailoring testimony prior to giving that testimony, on the gradation scale you would view that as more serious, I trust?

Ms. BLACK. If people got together to tailor testimony prior—I don't know.

Mr. BEN-VENISTE. OK, now, let me ask you this. If I understand what you are saying, Mr. Adair and Ms. Black, what really matters is whether there's some venal intent when people look at other people's versions of events in which they participated; is that correct, Mr. Adair?

Mr. ADAIR. Well, I suppose that would be correct, yes.

Mr. BEN-VENISTE. Do you disagree, Ms. Black?

Ms. BLACK. I wouldn't want the testimony influenced regardless of intent.

Mr. BEN-VENISTE. Either way, you think it would be improper for someone to get together with someone else to share recollections before testimony were given?

Ms. BLACK. No, I never said that.

Mr. BEN-VENISTE. Wouldn't it matter if the intent were venal? If the intent were salutary, beneficent, good, then I presume you would think that getting together to go over recollections would be a good thing?

Ms. BLACK. There are——

Mr. BEN-VENISTE. Don't you know, Ms. Black?

Ms. BLACK. There are certainly times when I can imagine witnesses getting together to refresh their recollection.

Mr. BEN-VENISTE. If their motive is good, because they want to tell the truth and they want to give as accurate a version as possible, Ms. Black, you would think that would be a good thing, wouldn't you?

Ms. BLACK. For the most part as long as there is no reason for them not to have done so.

Mr. BEN-VENISTE. Well, you wouldn't know that unless you knew the people and you knew the circumstances, I take it; correct?

Ms. BLACK. That is correct, in this instance we were talking about turning over transcripts from RTC witnesses to White House witnesses, not White House witnesses getting together to talk.

Mr. BEN-VENISTE. Right, but if they got together to talk about what they were going to say, you would think that was even worse, I take it?

Ms. BLACK. If the White House witnesses got together?

Mr. BEN-VENISTE. Yes, they had their transcripts, they knew what questions had been asked, et cetera, that would even be worse if their intention was venal; correct?

Ms. BLACK. If what you are asking me is, do I find it acceptable if witnesses get together with the intent of inaccurately influencing their testimony, of course. That's——

Mr. BEN-VENISTE. That would be bad, but if they got together for the purpose of providing even more accurate and careful testimony, that would be a good thing?

Ms. BLACK. Presumably so.

Mr. BEN-VENISTE. Just like the four of you got together before you gave your testimony under oath to this Committee; correct?

Ms. BLACK. That is correct.

Mr. BEN-VENISTE. Because when the four of you got together as you did prior to giving your sworn deposition testimony, it was to exchange your recollections of events, to look over documents, to look over diary entries and to provide the most accurate testimony you might be able to give to this Committee; correct?

Mr. ADAIR. Correct.

Ms. BLACK. Correct.

Mr. BEN-VENISTE. So that for the purposes of giving accurate and complete testimony, as Secretary Bentsen said it was his objective to obtain, it would be a good thing to share recollections, to share documents and to bounce off one another your recollections of these events; correct, Mr. Adair?

Mr. ADAIR. I think sharing internal documents, yes.

Mr. BEN-VENISTE. Well, the fact is that—I notice that each of you had a document in front of you today. Let me ask you whether that was a chronology prepared by Ms. Black; is that correct?

Ms. BLACK. That's correct.

Mr. BEN-VENISTE. Do you have it? Could we see it? Everybody else have one? Here is one Mr. Adair pulled from his coat pocket. So each of the four of you have a chronology of events which we have marked as Exhibit No. 25,262, which—52, I am corrected. A, let me add.

The CHAIRMAN. Can I have a copy of that?

Mr. GIUFFRA. Sure.

Mr. BEN-VENISTE. That chronology was prepared according to a note that—at the top of it on the 2nd of February, 1975. Is that your note, Ms. Black?

Ms. BLACK. 1995. Yes, sir.

Mr. BEN-VENISTE. 1995, I'm sorry. What am I thinking of?

Is that your handwriting, Ms. Black?

Ms. BLACK. Yes, it is.

Mr. BEN-VENISTE. One of the four of you misremembered when this chronology was prepared. Does the person who misremembered it recall having done so? Somebody said it was prepared in the summer of 1995.

Mr. BLIGHT. I guess I am the one, I think, that said that.

Mr. BEN-VENISTE. You didn't mean to misrepresent that, you just made an honest error?

Mr. BLIGHT. Right.

Mr. BEN-VENISTE. Is that because you didn't bring the chronology to the deposition with you, Mr. Blight?

Mr. BLIGHT. No, I brought it with me.

Mr. BEN-VENISTE. You didn't notice it had 2/2/95 marked on it?

Mr. BLIGHT. The one I have has a paper punch through the first date.

Mr. BEN-VENISTE. So you couldn't tell when it was prepared?

Mr. BLIGHT. Correct, I have 2/95, but not——

Mr. BEN-VENISTE. I hate it when that happens.

But it was prepared, was it not, Ms. Black, back in February, because you did the same thing with the Office of Independent Counsel that you did with this Committee, when you learned that you were to be interviewed by the Office of Independent Counsel you all got together; right?

Ms. BLACK. That's correct, we did.

Mr. BEN-VENISTE. You went over your recollections, you went over the documents, and you went over this chronology that you prepared; correct?

Ms. BLACK. That's correct.

Mr. BEN-VENISTE. The chronology doesn't represent each individual's recollection, it represents the combined recollection of you all plus the documents you were able to use to refresh your recollections; correct?

Ms. BLACK. I believe that's correct, yes.

Mr. BEN-VENISTE. OK, so this, getting together, preparing the chronology which each of you have felt the need to keep close to your persons here today, was a helpful thing and not an obstructive thing to do?

Ms. BLACK. Yes.

Mr. BEN-VENISTE. That's because you are good people and you want to provide the most accurate information to us here today. You see the irony of what I am getting at, Ms. Black?

The CHAIRMAN. I don't. I don't see any irony in it. I make an observation that the four people here are the investigators or counsels to the investigators, they are here as witnesses, they are not the subject of an investigation; and it would be absolutely appropriate for those people who conducted the investigation to sit down, to chronicle the meetings that they had, the process that they engaged in, so they could share that with whoever might ask them at the appropriate time that is far different from making transcripts available or summaries of transcripts, or having people who were the subject of the investigation or who work in the subject's office, privy to and part of that investigation. If Counsel has a difficult time seeing the distinction, why, then, we just disagree but I think it is rather clear and rather obvious that they are in the same situation as Francine Kerner, who was acting as counsel to the investigatory body and at the same time, serving people under investigation. Absolutely incredible.

Mr. BEN-VENISTE. We will get to the—I think the facts rather, than about who was serving anybody with any information, Mr. Chairman. But the point that I make is that it is not unusual for lawyers, being careful people, who are going to give sworn testimony, which we all regard as a very important thing to do, to be as accurate as possible, to have their recollections refreshed before the fact rather than after the fact—oh, my God I forgot this or why didn't I look at my diary or why didn't I ask Mr. Switzer because he was there and I really was in and out of the meeting.

All of that led you to do an appropriate and professional thing, in my view, because I don't criticize you for doing it. I think it would be wrong to criticize you for doing it. But you wanted to be careful and complete, and you did that with the Independent Counsel investigation, you did that with our investigation. Indeed, it is true that after the first of you who was questioned you provided some information to the others yet to be questioned about the questions which were asked; isn't that so?

Ms. BLACK. More about the tenor of questioning, the length of it.

Mr. BEN-VENISTE. I can go to the transcript and get to the anecdotal part back.

Ms. BLACK. Before you interrupted me I was about to say and anecdotal.

Mr. BEN-VENISTE. So the substance of it as well.

When we questioned you about the meetings that you had. We didn't try to trip you up, to say did you have a meeting to discuss the substance of what you were going to testify about when we learned that you had already; isn't that so? It was—who was the second to testify; do you remember?

Mr. SWITZER. I was.

Mr. BEN-VENISTE. Now, Mr. Switzer, do you remember that Mr. Kravitz questioned you, and he said do you recall having a meeting on such and such a date with your colleagues, Mr. Blight, Ms. Black, and Mr. Adair.

Mr. SWITZER. Yes, I do recall.

Mr. BEN-VENISTE. He didn't try to trap you into that, into possibly not referring that?

Mr. SWITZER. No, sir, he didn't.

Mr. BEN-VENISTE. Now, if——

Mr. SWITZER. If I could interject something, sir. If I recall, you referenced this document as 025252 A.

Mr. BEN-VENISTE. Yes.

Mr. SWITZER. That document is—was prepared by me, that's an addenda to Ms. Black's. It's got some handwritten notes on I put on it.

Mr. BEN-VENISTE. Your handwriting?

Mr. SWITZER. Yes.

Mr. BEN-VENISTE. Ms. Black's is 25,252, no A.

Mr. SWITZER. I believe that's the case.

Mr. BEN-VENISTE. Did you share your handwritten addenda or did you keep that just to yourself, Mr. Switzer?

Mr. SWITZER. Kept to it myself.

Mr. BEN-VENISTE. Nobody else has seen it?

Ms. BLACK. I have not.

Mr. BEN-VENISTE. Mr. Switzer doesn't share his work, but you were willing to share yours, Ms. Black; correct?

Ms. BLACK. I put together the chron and gave it to him.

Mr. BEN-VENISTE. Now, if somebody were to take a conspiratorial view, to take the Chairman's observation a step further, and say well, there is something wrong with the investigation, let's go investigate the investigators, you are no longer the hunters you are the hunted, then we could look at your transcripts and look for things that look very similar, like how Mr. Giuffra this morning knew to ask each of you whether you were, quote, shocked to learn that the transcripts had been disseminated to the White House. Do you get my point, Ms. Black?

Ms. BLACK. No, sir, I don't.

Mr. BEN-VENISTE. Each of you testified in your depositions about your reaction and each of you used the word shock to describe your reaction.

Ms. BLACK. That is unsurprising. That is a very accurate description of the way we all felt.

Mr. BEN-VENISTE. But if someone had looked at this in a jaundiced way with a conspiratorial eye and said these witnesses had all cooked up their testimony look, we can prove it because the word shocked is used—I don't take that view because I don't think you did anything wrong by getting together. But what I do have a problem with is the suggestion that we must look for conspiracies everywhere and wrongdoing everywhere when lawyers who are careful simply want to get the benefit of all the information that's out there.

Now, each of you, I am sure, paid attention to the Senate hearings last year. Did you find that any witness tailored his or her testimony because of the transmittal of transcripts?

Ms. BLACK. I have no idea, sir.

Mr. BEN-VENISTE. Do you have an idea?

Mr. ADAIR. No, sir.

Mr. BEN-VENISTE. Mr. Blight.

Mr. BLIGHT. No, I don't know.

Mr. BEN-VENISTE. Mr. Switzer.

Mr. SWITZER. I don't know.

Ms. BLACK. If I may, we've not suggested venal intent, we simply said it is an improper investigative technique that is against our procedures. That's all we've said.

Mr. BEN-VENISTE. That is when you do a normal RTC IG investigation?

Ms. BLACK. That is any time we do any kind of RTC IG investigation, it doesn't matter——

Mr. BEN-VENISTE. Have you ever done one for the OGE before or the Secretary of the Treasury?

Ms. BLACK. No, sir.

Mr. BEN-VENISTE. Let me ask you a question about the White House Counsel's Office. It is correct, is it not, that Ms. Sherburne from the White House Counsel's Office came over and expressed her problem? Her problem was she wanted to get all the information she could, she had a very tight timeframe, as did you, and I think in document No. 3685, which is a memo you, Ms. Black, sent to you, Mr. Adair, or an E-mail, that problem was discussed; correct? Do you have that document in front of you?

Ms. BLACK. I don't have the document.

Mr. BEN-VENISTE. We will supply it to you. Mr. Portnoy would be glad to do that.

Ms. BLACK. This E-mail is dated August 3, so this was actually after completion of our investigation, and yes, that does reflect a telephone call that I had with Ms. Sherburne.

Mr. BEN-VENISTE. All right. Now, I would like you to read, if you would, Ms. Black, that third full paragraph.

Ms. BLACK. It reads:

> I think that Sherburne had thought there was not a definitive refusal because although I said the RTC IG would not agree to that, Kerner was more sympathetic to the problem that Cutler had. Sherburne and Cheston had said that in order to do a full investigation for the White House, they needed to have testimony of Treasury and RTC personnel, but if they tried to interview them they were afraid that they would be accused of trying to intimidate people.

Mr. BEN-VENISTE. Let me stop you there.

So, when Ms. Sherburne came over, she explained the problem, that in order to help Mr. Cutler as his assistant with his investigation, she wanted to get the information from Treasury people, but she didn't want to be in the position of being criticized for how she got that information if she were to try to interview everybody.

Putting aside——

Ms. BLACK. Treasury and RTC, yes, sir.

Mr. BEN-VENISTE. Putting aside the issue of taking the testimony under oath and all the logistical problems associated with doing this in a short period of time, she had another problem and that was an appearance problem; correct?

Ms. BLACK. That's correct.

Mr. BEN-VENISTE. What did you say to her according to your E-mail to Mr. Adair?

Ms. BLACK. Do you want me to continue reading?

Mr. BEN-VENISTE. Yes.

Ms. BLACK. It reads:

I had agreed that that was a potential problem but that it would be worse for us to violate our normal procedure and turn over the transcripts before the report was finished. Kerner thought there might be room for further discussion but I did not.

Mr. BEN-VENISTE. OK. Now, it is very possible, is it not, that on the basis of that, which—the meeting occurred when?

Ms. BLACK. That references back to a meeting on July 5.

Mr. BEN-VENISTE. Right, so now as you get closer and closer to the completion of your investigation, your concerns must be less and less diminished about information being disseminated; is that right, Mr. Adair?

Mr. ADAIR. You are not referring to this August 3 memo, because the investigation was over then.

Mr. BEN-VENISTE. Right, but I am talking—I am going from the point that the conversation with Ms. Sherburne occurred in early July, now, to late July.

As you get later and later to the conclusion of your investigation, when all your witnesses are interviewed—how many witnesses were interviewed as of July 23?

Mr. ADAIR. I believe 25.

Mr. BEN-VENISTE. All but one?

Mr. ADAIR. 25 of 26, yes.

Mr. BEN-VENISTE. So at the point that the transcripts were sent from Treasury to the White House, everyone had been deposed except one witness, Mr. Ludwig; correct?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. Now, it is——

Mr. SWITZER. If I could——

Mr. BEN-VENISTE. Hang on for a second, Mr. Switzer, I will get to you in a second.

As of the time——

The CHAIRMAN. Counsel, you know, if he has something that can help, I think he should be permitted, because we do give latitude to the witnesses to be helpful and I certainly would like to know the point he was going to make and you can continue on with your questions. Mr. Switzer, what point were you going to make?

Mr. SWITZER. I just wanted to insert that at that stage of the game, we anticipated or thought that there would be one additional witness, but there could have been information developed from that witness that might have caused us to seek more.

Mr. BEN-VENISTE. All right, but as it turned out, you had done all the witnesses except Mr. Ludwig—and nobody says Mr. Ludwig's testimony was tailored or interfered with, do you? Does anyone here?

Mr. ADAIR. No, but I would make one point—I don't think anybody has focused on this—that when you do an investigation and you interview people, it tends to be an open-ended procedure. Interviewing Mr. Ludwig could have led to other interviews. In this case it did not.

Mr. BEN-VENISTE. Except for the fact that you were working against a timeframe that was somewhat close-ended, not open-ended, we are talking about a normal investigation when we are talking about this investigation, aren't we?

Mr. ADAIR. But we needed to document the number of contacts. If he had pointed us to other contacts, we would have had to continue our——

Mr. BEN-VENISTE. When did you send your draft report up?

Mr. ADAIR. According to this, July 22.

Mr. BEN-VENISTE. The day before or a couple of days before Mr. Ludwig was even questioned, right, you sent your draft report up. Doesn't that indicate that your draft—that your investigation was in pretty much complete form?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. With respect to whether anything bad happened—which I guess is what we want to know, as a Committee—did something bad happen as a result of all of this back and forth in the attempt to get information, the information that was used?

I would ask you, Mr. Blight, do you recall testifying at your deposition before our Committee, in answer to the question at page 38: "Would you say at the end of the day, that the RTC Inspector General was satisfied with the scope of the investigation?" Do you recall?

Mr. BLIGHT. Yes.

Mr. BEN-VENISTE. And, "Were there any areas that weren't looked into that RTC IG would have liked to look into?" You said, "I am not aware of any."

Mr. BLIGHT. No, we thought we covered all we wanted to cover.

Mr. BEN-VENISTE. You were asked whether there was any information that you could point to that indicated that there was any interference with your investigation, were you not?

Mr. BLIGHT. Yes.

Mr. BEN-VENISTE. You didn't find any, did you?

Mr. BLIGHT. I wasn't aware of any, no.

Mr. BEN-VENISTE. Mr. Adair, you were asked this question at page 96: "Did anyone from outside your office or the Office of Inspector General at the Treasury Department or the Office of Government Ethics try, in your judgment, to pressure you with respect to the results of your investigation?" And your answer?

Mr. ADAIR. They did not.

Mr. BEN-VENISTE. Did anyone try to direct to you a particular result?

Mr. ADAIR. No.

Mr. BEN-VENISTE. And at page 141: "Sir, do you have any reason to believe that the White House or anyone in the White House made improper use of the material in the deposition transcripts?" You had no reason to so believe, did you?

Mr. ADAIR. That's right. I don't know what they did with them.

Mr. BEN-VENISTE. Now, the issue of redactions is an interesting one which has come up here today, because looked at without some context, it might appear that somebody was trying to convey through these transcripts or the transmittal of the transcripts information that was of a very sensitive nature that people certainly shouldn't look at.

Let me ask you first, was it not your intention all along to include the transcripts with your report, Mr. Adair?

Mr. ADAIR. I believe it was.

Mr. BEN-VENISTE. Did you not believe that those transcripts were going to be made public?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. Isn't it a fact, sir, that you didn't even focus on the issue of redactions until Ms. Kulka raised that issue; correct?

Mr. ADAIR. Well, I believe Counsel was in charge of redactions, and she had focused on this issue, Patricia Black.

Mr. BEN-VENISTE. You are referring to Ms. Black?

Mr. ADAIR. Yes.

Mr. BEN-VENISTE. Did you attempt to make redactions in the transcripts before Ms. Kulka raised the issue?

Ms. BLACK. We didn't at that time. That was raised on the 28th.

Mr. BEN-VENISTE. Then all of you—I'm sorry, after the 28th.

Ms. BLACK. Well, the redactions were proposed on the 28th, made on the 29th, but the issue that arose then is whether we were going to make the transcripts public that weekend. We had not intended to do that. We were told that Secretary Bentsen wanted to do that and so at that point we had to make the redactions in very quick order and we did so. However, I had been long aware that I was going to have to make redactions before those transcripts were released.

Mr. BEN-VENISTE. OK, fair enough.

Ms. Kulka, you all testified, was very upset when she learned that unredacted transcripts were going to be disseminated; correct?

Ms. BLACK. We never said that unredacted transcripts were going to be disseminated. Ms. Kulka said she most certainly did not want unredacted transcripts disseminated and I agreed with her.

Mr. BEN-VENISTE. You all testified that she was very upset when she learned about the problem; correct?

Ms. BLACK. Yes, she was upset at the prospect of that happening.

Mr. BEN-VENISTE. Now to put into context—you didn't know, did you, what sensitive information there might be in these transcripts or whether the information in the transcripts was already in the public domain?

Ms. BLACK. I was well aware that there was very sensitive information in those transcripts. I had talked about it with others in the investigation. In fact, Jane Ley first raised the issue a couple of weeks ahead of time the first time she saw the transcripts.

Mr. BEN-VENISTE. Let me direct your attention to Ms. Kulka's testimony and see whether you disagree with it.

Ms. BLACK. She may not have known what was going on in our investigation, sir. We didn't discuss it with our General Counsel.

Mr. BEN-VENISTE. Here is her testimony well after the fact that was taken before this Committee on October 27, 1995, well after the dust of all of this had settled. At page 68:

Question: Ms. Kulka, in your opinion, did the release of unredacted transcripts of the Inspector General depositions to the White House have any significant practical effect on the RTC ongoing investigations in the Madison case?

Answer: I know of no significant effect of that release.

The CHAIRMAN. Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Ms. Black, am I not correct that information that was contained in these unredacted transcripts was disseminated in the General Counsel's Office at Treasury?

Ms. BLACK. My understanding was that the transcripts were disseminated within Treasury OGC.

Mr. GIUFFRA. Am I also not correct that Ms. Hanson ran the General Counsel's Office at the Treasury Department; correct?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. She was the subject of your investigation; isn't that right?

Ms. BLACK. Yes.

Mr. GIUFFRA. Mr. Foreman, you described him before as a critical fact witness?

Ms. BLACK. Yes.

Mr. GIUFFRA. Am I also correct that the White House and people in the General Counsel's Office of the Treasury Department were also hearing what RTC witnesses were saying in their depositions?

Ms. BLACK. My understanding is that all the depositions were given to——

Mr. GIUFFRA. They were not only hearing what people in the Treasury Department was hearing, or the White House, they were hearing what people at the RTC were saying in their depositions; right?

Ms. BLACK. That's my understanding, yes.

Mr. GIUFFRA. That's highly unusual, isn't it?

Ms. BLACK. In my view, yes.

Mr. GIUFFRA. Unprecedented, in fact, in your experience; isn't that right?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Now, am I also correct that the White House was learning what the Treasury Department witnesses were saying? Isn't that right?

Ms. BLACK. Our understanding is that the transcripts were transmitted to the White House on the 23rd, all the transcripts.

Mr. GIUFFRA. They also knew what RTC witnesses were saying about events that they were part of, events the people——

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Again, unprecedented; am I correct?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Mr. Cutler—we have had this question before—he was not an independent Inspector General; right?

Mr. ADAIR. He was not.

Mr. GIUFFRA. He was working on preparing for Congressional hearings, wasn't he?

Mr. ADAIR. That's correct.

Mr. GIUFFRA. Is that something you would do? You don't engage in damage control, do you, sir?

Mr. ADAIR. No, sir.

Mr. GIUFFRA. You don't engage in damage control for the RTC, do you?

Mr. ADAIR. We do not.

Mr. GIUFFRA. You look to try to find out the facts when some wrongdoing occurs in your agency; isn't that right?

Mr. ADAIR. Yes, sir.

Mr. GIUFFRA. Mr. Cutler was serving at the pleasure of the President; correct? You don't serve at the pleasure of the CEO of the RTC; isn't that right?

Mr. ADAIR. That's right.

Mr. GIUFFRA. Also, there was discussion here about whether this was supposed to be a normal RTC IG investigation, but wasn't it always your understanding this was supposed to be an independent investigation?

Mr. ADAIR. Yes.

Mr. GIUFFRA. Now, if we could put up on the Elmo several documents. Let's start off with document 00627, which is an E-mail from Patricia Black to Steven Switzer. One of the things we've learned throughout these hearings has been that documentary evidence is often the most persuasive. This E-mail, Ms. Black, you sent to Mr. Switzer; isn't that correct?

Ms. BLACK. It appears so, yes.

Mr. GIUFFRA. If I could read from the E-mail, you say, "We learned in the meeting that Treasury OGC had released the transcripts of witness interviews to Cutler. This was evidently with the knowledge of the Treasury IG, but nobody told us until after it was done." Isn't that correct, Ms. Black?

Ms. BLACK. Yes.

Mr. GIUFFRA. Am I also correct that when the question of giving the transcripts to the Treasury OGC arose, you objected; isn't that right?

Ms. BLACK. Yes.

Mr. GIUFFRA. In fact, the Treasury IG and the Treasury OGC did it anyway; isn't that right?

Ms. BLACK. Yes.

Mr. GIUFFRA. They told you about it after the fact?

Ms. BLACK. Correct.

Mr. GIUFFRA. You found that to be disturbing; isn't that right?

Ms. BLACK. Yes.

Mr. GIUFFRA. You advised Mr. Switzer; isn't that correct?

Ms. BLACK. Yes.

Mr. GIUFFRA. Mr. Switzer, you were disturbed when you found out about this, weren't you, sir?

Mr. SWITZER. Yes.

Mr. GIUFFRA. Mr. Adair, you were also upset, weren't you?

Mr. ADAIR. Yes.

Mr. GIUFFRA. There is no tailoring of your testimony with regard to what you are saying; you were genuinely upset because you thought you had an agreement with both the White House and also with the Treasury IG; isn't that right, Mr. Adair?

Mr. ADAIR. That's right.

Mr. GIUFFRA. Ms. Black, isn't that right?

Ms. BLACK. Yes.

Mr. GIUFFRA. Mr. Blight, isn't that correct?

Mr. BLIGHT. Yes.

Mr. GIUFFRA. Mr. Switzer, isn't that correct?

Mr. SWITZER. Yes. I would point out that at the time I received this E-mail I was in Texas on vacation, and had watched the first day of the hearing, July 26, that day of the hearing, and had noted Mr. Cutler's reference to it.

Mr. GIUFFRA. You learned about it on television, sir?

Mr. SWITZER. I learned it on television and Patricia confirmed it here to me.

Senator SARBANES. On vacation you watched the hearing?

Mr. SWITZER. Yes, sir. Laredo is a pretty sleepy town.

Mr. GIUFFRA. If we could put up——

Senator SARBANES. Must be, Mr. Switzer.

Mr. GIUFFRA. If we could put up another document, 06089. Mr. Switzer, these are your notes of a meeting that you had, I believe the date is 7/8/94. If I could just direct your attention to the part of the notes that are marked in yellow, and I'll read that into the record. It says, "Treasury Counsel 'pulled' Altman's diaries except certain pages. Noncompliance with IG act. Need to get all!" What were you referring to in your notes, sir?

Mr. SWITZER. Earlier, I believe, at the July 5 meeting when we had first met and discussed some of the preliminary aspects of doing our investigation and so forth. At that stage of the game we had learned that certain of the diaries existed, but at the time I prepared this a few days later, July 8 or so, I did not know the exact status of whether we had seen all of those, and I had a concern with that, that if they were not all made available to us or somehow satisfied us, that we may not be seeing all of those diaries. That's what that note is indicating.

Mr. GIUFFRA. Mr. Blight, if I could direct your attention to some notes that you prepared of a meeting that you had. These notes bear the Bates Nos. 25340, 25329, and are of a conversation that you had with Mr. Jim Cottos. Mr. Cottos is your counterpart over at the Treasury IG; isn't that correct?

Mr. BLIGHT. Correct.

Mr. GIUFFRA. In this conversation was Mr. Cottos relating to you a description of what was going on with regard to the response by the Treasury IG to the investigation that was being conducted by the Independent Counsel's Office; isn't that right?

Mr. BLIGHT. Yes.

Mr. GIUFFRA. Isn't it true—let me just read from your deposition.

Question: Did Mr. Cottos or anyone else ever tell you that anyone at the Department of the Treasury directed that certain relevant and responsive documents not be turned over to the Independent Counsel's Office on this subject?

Answer: Yes. On April 30, this transpired.

Then you proceed to discuss how a Mr. Rick Doery, who works at the Treasury IG's Office, was instructed by someone presumably not to turn over to the Independent Counsel certain E-mails complaining about Ms. Kerner. Could you expand on that, sir?

Mr. BLIGHT. Well, that's what I understood he said at the time, was that Mr. Cottos himself had written some E-mails that apparently were somewhat derogatory to Ms. Kerner and those were not turned over to the Independent Counsel.

Mr. GIUFFRA. You were advised of that by Mr. Cottos?

Mr. BLIGHT. Correct.

Mr. GIUFFRA. Mr. Cottos was very concerned about that?

Mr. BLIGHT. Yes.

Mr. GIUFFRA. He felt there was noncompliance with a lawful subpoena that was being issued by the Independent Counsel's Office, by the Treasury IG; correct, sir?

Mr. BLIGHT. That would be accurate.

Mr. GIUFFRA. One more document. Could we put up 11124. This is an E-mail from Ken Schmalzbach, Assistant General Counsel, Treasury Department, to Mr. Ed Knight, who is now the General Counsel of the Treasury Department. I would like to direct your attention to the third full paragraph.

Senator SARBANES. Which document are we referring to now?

Mr. GIUFFRA. Document 11124. Ms. Black, do you recall—you've testified previously about discussions with regard to providing the unredacted transcripts with the report when the report was made public. Do you recall that?

Ms. BLACK. Yes.

Mr. GIUFFRA. You were concerned about not releasing that unredacted information; right?

Ms. BLACK. That is correct.

Mr. GIUFFRA. Ms. Kulka was also concerned about that; isn't that correct?

Ms. BLACK. That is correct.

Mr. GIUFFRA. According to this E-mail, Mr. Schmalzbach was advising Mr. Knight that Mr. Knight should contact Mr. Ryan, who was the CEO at the RTC, to complain to Ms. Kulka and not to Mr. Adair. Now, that's because the reporting relationship between—Mr. Ryan is not your supervisor; is that right, Mr. Adair?

Mr. ADAIR. I think they may have thought that Ms. Kulka reported to me somehow, and they were correcting that to the fact that she reports to Mr. Ryan. That would be my interpretation of this.

Mr. GIUFFRA. Now, Ms. Black, if I could direct your attention to the fourth paragraph, it says:

> Counsel to RTC's IG, Pat Black, is telling this morning's gathering of the IG people working on the report that if Kulka fails to win on the issue of not making the transcripts public, she is prepared to testify at the hearings that the IG's group has been under the sway of the Secretary in performing their investigation.

Do you recall this?

Ms. BLACK. I recall—I recall seeing this E-mail, yes. I recall Ms. Kulka being very upset at the prospect of this information being publicly released. She was adamantly opposed to it. She said that the RTC had never confirmed certain data that were in those transcripts and they vehemently objected to its release. I do not—and Ms. Kulka did indeed threaten to go to Congress and indicate that there was interference with an investigation. I cannot recall whether she was saying that that would be interference with her investigation or ours.

Mr. GIUFFRA. OK. But she was concerned about at least interference with one of the two sorts of investigations——

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. —either your investigation or the investigation that the RTC was conducting; isn't that right?

Ms. BLACK. Yes, sir.

Mr. GIUFFRA. Thank you very much. No further questions.

The CHAIRMAN. I want to just make an observation. The last sentence—and again, this is the first time I've seen these documents. "I expect"—and this is from Kenneth Schmalzbach. Schmalzbach is—what is his title?

Mr. GIUFFRA. Assistant General Counsel at the Treasury Department.

The CHAIRMAN. He's the Assistant General Counsel at Treasury. Here is somebody at the very office under investigation, a major subject of the investigation, directing the boss, as it were, to undertake action—and I don't care how you want to read this—as he was just saying I heard from the IG Counsel specifics on how and what information will or won't be released, and he concludes, "I expect to hear from the IG Counsel," and "IG Counsel," I guess he was referring to—"how the meeting with Kulka"—that's Kerner. Now, this is the so-called independent IG Counsel, and I say supposed. How can an independent counsel, I say to my colleagues in all due deference, be independent if she's reporting to Kenneth Schmalzbach?

This is his E-mail, maybe his E-mail lied, but, "I expect to hear from the IG Counsel how the meeting with Kulka went at about noon. I will call you and give you revised talking points for Ryan," that's the head of the whole thing and Ryan is going to influence Kulka, "as soon as I hear from the IG Counsel."

Now, I have to suggest to my friends, and I don't care what side of the aisle, this is absolutely incredible, it is devastating, and it certainly demonstrates that the IG Counsel from Treasury was deeply involved in disseminating information to the very people under investigation, telling them what's happening, what information would be made public, what wouldn't be, and directing it. There is no similarity between the work of the investigators and what her position was and what her trust was and how it had been violated.

This is absolutely damning, and I can't think of any reason how this could take place, except as a continual pattern of that office attempting to control the investigation, controlling what would be seen, what wouldn't be seen, who was going to see it, and when they saw it.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, can we put that exhibit back up on the machine. We seem to have read all around one particular sentence that is, it seems to me, relevant to put into the record very clearly. "Kulka has no facts to support that perspective and I don't believe there's any basis for that perspective." In other words, referencing Kulka's view that the IG's group had been under the sway of the Secretary in performing their investigation. Now, isn't that what that sentence refers to, "Kulka has no facts to support that perspective and I don't believe there's any basis for that perspective."?

Mr. ADAIR. It would appear so, Senator.

Senator SARBANES. Isn't that correct?

Mr. ADAIR. Yes.

Senator SARBANES. Ms. Black, at the RTC, was the Counsel to the Inspector General in the Inspector General's Office or in the General Counsel's Office?

Ms. BLACK. In the RTC I work directly for the IG. I am not a part of the General Counsel's Office.

Senator SARBANES. Now, at the Treasury I gather the arrangement was different; is that correct?

Ms. BLACK. Yes, sir.

Senator SARBANES. The Counsel to the Treasury Inspector General was part of the General Counsel's Office of the Treasury Department; is that correct?

Ms. BLACK. That's correct.

Senator SARBANES. So they did it differently than the RTC?

Ms. BLACK. Yes, sir.

Senator SARBANES. I mean, that was an arrangement that existed far before any of this arose; is that correct?

Ms. BLACK. Yes, sir.

Senator SARBANES. Now, I understand you used to be at HUD; is that correct?

Ms. BLACK. That's correct.

Senator SARBANES. What was the arrangement at HUD?

Ms. BLACK. At the time when I was at HUD the arrangement was that the Counsel to the IG was a part of the Office of General Counsel, and we served under a memorandum of understanding between the IG's Office and the General Counsel. That is no longer true. The IG at HUD now has pulled the Counsel's function into her own office.

Senator SARBANES. But there was a time when the arrangement at HUD was comparable to the arrangement at Treasury rather than the arrangement at RTC; is that correct?

Ms. BLACK. Yes, sir.

Senator SARBANES. That was when you were there; correct?

Ms. BLACK. Yes, sir.

Senator SARBANES. You were part of the General Counsel's Office of HUD?

Ms. BLACK. Yes.

Senator SARBANES. But you were the Counsel to the Inspector General of HUD; correct?

Ms. BLACK. That is correct.

Senator SARBANES. Just like Ms. Kerner was at the Treasury Department?

Ms. BLACK. Well, as I said, we operated under a memorandum of understanding which was different than was in place at Treasury. In addition, we followed it scrupulously.

Senator SARBANES. Now, was your memorandum of understanding comparable to this memo that Mr. Cesca outlined with respect to the provision of legal advice and services to the OIG?

Ms. BLACK. No, it was not. It was much broader.

Please understand that it has been more than 5 years since I have looked at it, but the memorandum of understanding that was in place there was that on all occasions when serving as IG Counsel, the attorney reported to the IG, and I mean that was always the case. It wasn't something that was put in place for one investigation.

Senator SARBANES. But to the extent it applied to a particular investigation, was the Cesca memo comparable to the HUD arrangement?

Ms. BLACK. As I said, I think at HUD it was broader. There was——

Senator SARBANES. In the sense that you said it wasn't put in place on each instance, but in this instance Treasury sought to put

in a Chinese wall and I'm asking whether that was comparable to the Chinese wall that existed when you were at HUD. A Chinese wall was not necessary at RTC because you structured it differently; correct?

Ms. BLACK. Correct.

Senator SARBANES. But when you were at HUD, was that comparable to the arrangement with respect to the specific matter here?

Ms. BLACK. It having been more than 5 years since I've reviewed the one at HUD, my recollection was that it was a stronger memorandum. But it did put in place certain reporting requirements and certain limitations on my authority to discuss IG work outside the IG's Office, and I did not do so.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. Adair, the suggestion has been made that it was in some way inappropriate for Secretary Bentsen to be provided with a draft of the IG report and copies of deposition transcripts on July 22 before your report was finalized. I want to ask you some questions relating to that issue.

As the Inspector General of the RTC, do you or members of your staff ever brief or provide information to the CEO of the RTC regarding ongoing investigations?

Mr. ADAIR. On occasion, yes.

Mr. KRAVITZ. What are the circumstances under which that occurs?

Mr. ADAIR. Well, if there's a significant high-level investigation and the CEO wishes to know the status of it, we would brief him on that.

Mr. KRAVITZ. You would brief the CEO by providing information, factual information, that your office has obtained from your investigation; correct?

Mr. ADAIR. Yes.

Mr. KRAVITZ. That's the case even if the investigation is still ongoing; correct?

Mr. ADAIR. Yes, it would be an oral briefing.

Mr. KRAVITZ. In light of that, do you think it was appropriate for Secretary Bentsen to be provided with information relating to the ongoing RTC IG and Treasury Department IG investigation into White House–Treasury contacts toward the end of July 1994?

Mr. ADAIR. Do I think it was appropriate that he got the draft report?

Mr. KRAVITZ. Yes.

MR. ADAIR. Well, that was something that the Treasury IG was pretty much insistent upon providing, and I must tell you, I did not object because it was my understanding that Secretary Bentsen really wanted to be able to make a decision on what to do about the people in the Treasury Department and he needed this kind of information to make a decision.

Mr. KRAVITZ. Well, Mr. Adair, wasn't it more than simply that you did not object? Didn't you actually think that it was appropriate for Mr. Bentsen, under those circumstances, to receive the draft report?

Mr. ADAIR. I think I did, yes.

Mr. KRAVITZ. You did think it was appropriate, didn't you?

Mr. ADAIR. Yes.

Mr. KRAVITZ. You also thought it was appropriate that Secretary Bentsen receive not only the draft report but the copies of deposition transcripts that had already been obtained as a result of the ongoing investigation; is that right?

Mr. ADAIR. I would say that would be appropriate in the sense that if he needed to go beyond the draft report and into the specifics of transcripts, that he would obviously need the transcripts to do that, yes.

Mr. KRAVITZ. The reason it was appropriate for Secretary Bentsen to receive that ongoing briefing, that information, was that he needed to be in a position to make important personnel decisions possibly?

Mr. ADAIR. Yes, sir.

Mr. KRAVITZ. Mr. Switzer, I would like to ask you a few questions, just general questions about the RTC IG's investigation in this matter.

I think the implication has been made that due to time pressures imposed by the upcoming start date of the Congressional hearings, there may have been some concern that the IG's officials did not complete their investigation or conduct as complete an investigation as they would have liked. To your knowledge, was there any witness who the Inspector General's Offices thought should be deposed who was not deposed?

Mr. SWITZER. No, sir.

Mr. KRAVITZ. To your knowledge, was there any document or set of documents that the RTC IG's Office or the Treasury IG's Office thought that they needed that were not obtained?

Mr. SWITZER. Not that we were able to identify.

Mr. KRAVITZ. OK. To this day you have not identified a single document or single witness that you didn't have access to in July 1994; correct?

Mr. SWITZER. I believe that's true, yes.

Mr. KRAVITZ. Now, by the way, does the RTC IG have the power to subpoena witnesses?

Mr. SWITZER. No, we do not.

Mr. KRAVITZ. Does the RTC IG have the power to subpoena documents?

Mr. SWITZER. Yes, we do, but not from other Federal agencies.

Mr. KRAVITZ. So if the——

Mr. SWITZER. Senator, I didn't hear you.

Senator SARBANES. I didn't hear your answer.

Mr. SWITZER. We have subpoena power for documents, but we cannot subpoena documents from other Federal agencies.

Senator SARBANES. From other agencies.

Mr. KRAVITZ. So if the RTC IG wishes to obtain documents from the White House, you have no authority to subpoena those documents?

Mr. SWITZER. None to my knowledge, no.

Mr. KRAVITZ. As a result, if the subject of your investigation touches on the White House, you rely on cooperation of the White House to provide documents; correct?

Mr. SWITZER. That's what we would have to do.

Mr. KRAVITZ. Also to provide access to witnesses?

Mr. SWITZER. That's correct.

Mr. KRAVITZ. And the same would apply to the Treasury Department?

Mr. SWITZER. I don't think normally we would be conducting an investigation in the Treasury Department.

Mr. KRAVITZ. But if you wish to receive documents from the Treasury Department, you have no authority to subpoena them; correct?

Mr. SWITZER. That's correct.

Mr. KRAVITZ. You have to rely on their cooperation?

Mr. SWITZER. Yes, we would.

Mr. KRAVITZ. Now, in this case was there any problem with the Treasury Department making witnesses available?

Mr. SWITZER. None to my knowledge. The Treasury Department witnesses were arranged by the Treasury IG's Office.

Mr. KRAVITZ. As far as you know, every White House witness that the IG's Offices wished to depose was made available?

Mr. SWITZER. As far as I know, yes.

Mr. KRAVITZ. Voluntarily?

Mr. SWITZER. We got to talk to those that we asked to.

Mr. KRAVITZ. All of the documents that the RTC and Treasury IG's Offices received from the White House were provided voluntarily, without subpoena?

Mr. SWITZER. There were no subpoenas.

Mr. KRAVITZ. Thank you. That's all I have, Senator.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

I just wanted to say that we have four good people in front of us today and they wanted to do a thorough and complete investigation, but they knew, however, that while they were trying to do it, that Ms. Kerner of the Treasury Department, who reported directly to Jean Hanson and Dennis Foreman, was in on the investigation and that created a problem from day one. No matter how hard they worked, this was a problem they had to work around. The White House was the problem.

We don't know what the White House told their employees to do about information they got from the Treasury, what to do with it. In all, it was another Treasury–White House influence on the investigative process, and that is the problem and has been the problem all the way through and these people, of course, recognized it.

I just have one quick question. Mr. Switzer.

Mr. SWITZER. Yes, sir.

Senator FAIRCLOTH. The gentleman just gave you an E-mail message that you sent to Mr. Blight on July 27, 1994. Would you read that aloud to the Committee? Explain the circumstances which led you to write it.

Senator SARBANES. Could the Senator give us the number of this exhibit?

Mr. SWITZER. I have it. 06054.

Senator SARBANES. Thank you.

Mr. SWITZER. Do you want the whole thing, sir?

Senator FAIRCLOTH. If you don't mind. It's not that long.

Mr. SWITZER. It reads:

Clark, my comments on the draft are limited to just one main one. I suppose in their wisdom [and haste] Treasury folks decided not to even mention the Ludwig contact.

Otherwise, Pat and Jack have shared their E-mail traffic with me about Treasury, abbreviated, OGC sharing copies of transcripts with the White House. Does that action possibly violate the brand-new White House rules about—abbreviated White House, about what they will and will not do in connection with investigations by regulatory, misspelled, or law enforcement agencies? We can discuss on Friday when I return.

Senator FAIRCLOTH. Mr. Switzer, could you explain to me what the new White House rules are you were talking about in that memo?

Mr. SWITZER. Well, Senator, I mentioned earlier that at the time this was going on, I was on vacation in Laredo, Texas, and I had watched the first day of the hearings but I had also read in the paper, either on the 26th or the 27th, and in the paper had read something to the effect that because there seemed to be some sort of a problem with sharing this information as it came out or was being reported upon, that the White House had implemented some sort of new rules that they intended to apply in dealing with regulatory investigations so that they wouldn't have that problem anymore.

I simply thought that it was ironic that the day I was reading that or within a day or two I heard Mr. Cutler testifying that they had their hands on the transcripts of our investigation, which had not yet been completed.

Senator FAIRCLOTH. Did you take any action after writing it?

Mr. SWITZER. No, sir, I did not. I came back to Washington the next day.

Senator FAIRCLOTH. Did you discuss it—as you indicated in the memo, did you discuss it with Mr. Blight?

Mr. SWITZER. Yes, sir, I did discuss it with him when I returned, but when I returned—I arrived back at work on the 29th. I traveled on the 28th, and of course the report was issued on the 29th.

Senator FAIRCLOTH. All right, that's all. Thank you.

Mr. SWITZER. You're welcome, sir.

The CHAIRMAN. Let me say, unless Senator Bond has any questions, we have no further questions, but I would make an observation and if any of you have a different observation, please let me know. I'm just gathering this from the testimony I have heard today and the memos, almost every one of which I have just seen for the first time. Transcripts went to the Office of General Counsel starting sometime before July 13. We don't know if they were sent all at one time, but we know they were sent over there, and none of you were aware of that taking place; is that correct?

Mr. BLIGHT. No, sir.

The CHAIRMAN. I find disturbing that the very office under investigation and one of the main subjects, the General Counsel's Office, was provided transcripts of testimony of witnesses absolutely violating every cardinal principle of any investigation. Imagine if you were the FBI investigating somebody and their sworn statements were being given to the people you were investigating. It's improper, but that is exactly what took place.

Now, I suggest that the transfer of information and its affect on the progress of the investigation and the accuracy of testimony of witnesses who had the opportunity to be advised about others testimony, and then denied that they met with X or Y or Z to discuss their testimony, particularly if they were advised by their attorneys, violates any investigatory procedure, and therefore regardless of how hard you may have tried, the investigation itself is suspect, not because of a lack of effort on your part. It was compromised by the very person to whom it was assigned—the Inspector General at Treasury.

We will attempt to ascertain how she could possibly do this. The investigators were not even made aware of this. In Mr. Switzer's case you learned of this for the first time when you were down in Texas on vacation. It was done over the strong objection of those people undertaking the investigation.

Those are the facts. That's not fancy. We are not in the position to say at this time how that information may or may not have been used. Was the investigation compromised? Absolutely. Did Treasury at the highest levels compromise the investigation? They certainly did. So I think that is certainly a fact.

I have no further questions, and if Counsel wants to make any observations or raise any further questions, certainly that would be appropriate.

Senator Bond, do you have a question to raise or a statement before I yield to Senator Sarbanes?

Senator BOND. Senator Sarbanes has the floor.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Is it our time?

The CHAIRMAN. We still have time, but fine, you know.

Senator SARBANES. Mr. Adair, you were carrying out an inquiry with respect to RTC people; is that correct?

Mr. ADAIR. Well, the way the investigation was structured, we formed two teams of two people on each team and each team had one RTC investigator on it and one Treasury investigator, so we were jointly interviewing RTC, Treasury, and White House people with these two teams.

Senator SARBANES. Oh, I see. So you were working together, in effect, in a joint investigation?

Mr. ADAIR. Yes, sir.

Senator SARBANES. The two Inspectors General's Offices; is that correct?

Mr. ADAIR. Yes, sir.

Senator SARBANES. Do you think it was inappropriate for Mr. Cutler, in order to prepare to testify before the Congress, to have access to the material that was provided to him?

Mr. ADAIR. I think it was, yes.

Senator SARBANES. Why?

Mr. ADAIR. Well, from our standpoint, you have to appreciate that we were doing an investigation of Treasury–White House contacts, and from my perspective, there shouldn't have been any involvement of the Treasury General Counsel's Office. The White House, I would think, would want to stay as far away from this as it could to let the independent investigation unfold until it was completed.

Senator SARBANES. I thought the investigation had unfolded.

Mr. ADAIR. It was almost complete, not totally complete.

Senator SARBANES. Would you have had any problem with it if it was complete in every conceivable sense?

Mr. ADAIR. If the transcripts—if the investigation was complete, the report issued and the transcripts redacted for the criminal referral material—that's kind of a key point also—then I would have no problem with him having materials.

Senator SARBANES. In fact, you assumed that the transcripts would be published?

Mr. ADAIR. In a redacted form.

Senator SARBANES. So then they would have been available to anyone and everyone; is that correct?

Mr. ADAIR. Yes, sir.

Senator SARBANES. So it's a matter of days that we're talking about here; is that correct?

Mr. ADAIR. Yes, sir, it is.

Senator SARBANES. Do you think what happened tainted your report?

Mr. ADAIR. In terms of the transcripts being sent to the White House, I don't think that tainted our report. In terms of the——

Senator SARBANES. No, I don't see how it could have. How could it have possibly tainted your report?

Mr. ADAIR. I don't think it did in terms of——

Senator SARBANES. You had finished all of your depositions, had you not, except for one?

Mr. ADAIR. Yes, sir.

Senator SARBANES. That one, I gather, was not sort of relevant to the problem we're talking about; is that correct?

Mr. ADAIR. Yes.

Senator SARBANES. So you had finished all of your depositions, you had all your sworn testimony. In fact, you had even done a draft final report. Was it a joint draft final report?

Mr. ADAIR. Yes, sir. Yes, it was.

Senator SARBANES. OK. That was submitted to the Secretary of the Treasury?

Mr. ADAIR. Yes, sir.

Senator SARBANES. Did you think that was appropriate?

Mr. ADAIR. Yes, I did.

Senator SARBANES. You did, that it should be given to Secretary Bentsen?

Mr. ADAIR. Yes.

Senator SARBANES. The transcripts, as I understand it, were not sent over to Mr. Cutler until after that, after the draft final report?

Mr. ADAIR. The 23rd, yes, that's correct.

Senator SARBANES. The draft final report was either the day before or 2 days before?

Mr. ADAIR. The day before.

Senator SARBANES. So from the point of view of your inquiry, there's nothing here that happened that affected the merits of the substance of your inquiry, at least as I see it. I'm searching and I don't see anything that would have affected it.

Mr. ADAIR. Other than the redactions not having been made. In other words, the transcript contained material involving the crimi-

nal referrals, Madison Guaranty, and should have been redacted before anyone was to see them.

Senator SARBANES. The material not redacted, was that previously in the public domain through leaks?

Mr. ADAIR. I believe some of it was definitely, yes, but none of it had been put out by the RTC, or approved by the RTC in a sense.

Senator SARBANES. It didn't have an official imprimatur, but as I understand it, all of it was in the public domain through leaks.

Mr. ADAIR. I don't know, sir. I think a good deal of it had been, though.

Senator SARBANES. Can you think of anything that was not in the public domain that had not been redacted? You obviously can think of things that were in the public domain because you've just said as much. Can you think of anything that was not in the public domain?

Mr. ADAIR. No, I cannot. I don't know.

The CHAIRMAN. Senator Bond.

Senator BOND. Following up on that, Ms. Black, do you know—can you think of information that should have been redacted that was not in the public domain?

Ms. BLACK. It's hard to——

Senator BOND. Obviously if it should not be in the public domain now, we—clearly you don't want to get into it, but do you have——

Ms. BLACK. It's hard to remember back what was in the public domain at that time, what has come out since then. But I thought at the time I was redacting it, Senator, that there was information in those transcripts which was not in the public domain at that time.

In addition, the RTC—it wasn't a matter of not having the official imprimatur. The RTC considered it highly privileged and confidential material, yet RTC had not acknowledged specifics on a number of items here. If you just—just take numbers. There were all sorts of numbers floating around as to how many criminal referrals there were. RTC had never said which number was right.

There was all sorts of information in the public domain. Much of it was wrong.

Senator BOND. Let me jump to the July 5 meeting where apparently you had the major discussions about whether there would be participation by the non-IG personnel, what availability of transcript would be. Who was in that meeting? Who came into that meeting?

Ms. BLACK. There were two meetings on July 5. One of them was in the morning and that was comprised of IG personnel; and the second one was in the afternoon and that was comprised of the Counsel to the Treasury IG, myself, and two Counsels to the White House.

Senator BOND. Were the Counsels for the White House Ms. Sherburne and Ms. Cheston?

Ms. BLACK. Yes, sir.

Senator BOND. What did they ask you about the access to the—either to the interviews or the transcripts?

Ms. BLACK. At first their preference was to actually attend the depositions of the various witnesses, and I said that that would vio-

late our procedures, that we had to do this investigation by the book and no, they could not do that. That was presenting the RTC IG point of view. After that, the second preferred method would be to get the transcripts themselves of the interviews, and my reaction was the same: No.

Senator BOND. You were clear on that?

Ms. BLACK. Yes, sir.

Senator BOND. Did you not leave any doubt in their mind that you definitely did not want them to have those transcripts?

Ms. BLACK. I left no doubt.

Senator BOND. Then you found out later that these transcripts had been released on the—you found out that they had been released and that they were released in an unredacted version to the White House?

Ms. BLACK. Yes, sir. We found that out on the 26th, and to the best of our knowledge they were released late on the 23rd.

Senator BOND. Why was that—what was your reaction to that discovery?

Ms. BLACK. I was astounded. I was angry.

Senator BOND. Why were you angry?

Ms. BLACK. We had vehemently objected to that, and it was done over our expressed objections without any consultation. This was—again, to go back to the fundamentals, this was an investigation that we were doing into Treasury's leak of RTC information to the White House, and they had done it again.

The CHAIRMAN. If my colleague would bear with me, there's something that I don't know, but did there come a time when you found out that the Inspector General's Office at Treasury was making available the unredacted transcripts to the Treasury Department?

Ms. BLACK. We became aware, of a certainty on the 21st or 22nd that they had them at that time.

The CHAIRMAN. What did you feel about that?

Ms. BLACK. I wasn't very pleased about that either, but it was done.

The CHAIRMAN. Did you become aware at some point that they actually started making these transcripts available starting on or about—certainly no later than the 13th of July?

Ms. BLACK. I didn't know that until about 3 weeks ago.

The CHAIRMAN. Right. So while you were investigating people at Treasury, part of your investigation, depositions, unredacted, are going to Treasury. I mean, the analogy——

Senator SARBANES. Do you know that?

The CHAIRMAN. Well, you found that out when?

Senator SARBANES. Do you know that?

Ms. BLACK. I was told about 3 weeks ago in my deposition that that was happening.

Senator SARBANES. Told by whom?

Ms. BLACK. By the questioners and I——

Senator SARBANES. But you only know it from the premise of a question put to you; correct?

Ms. BLACK. Yes, that's correct. I have no independent knowledge of that.

Senator SARBANES. That is very important. If you are sitting here giving us an answer based on the premise of a question that was put to you and assuming the premise was correct, that is very different than if you are telling us something from your own knowledge.

The CHAIRMAN. That's important.

Ms. BLACK. Yes, sir, it is.

Senator SARBANES. Now, you were taking the premise of the question——

Ms. BLACK. I was taking the premise of the question, sir.

Senator SARBANES. It's very important that that be clear.

The CHAIRMAN. The following question was asked in the deposition of Kenneth R. Schmalzbach, October 20, 1995, page 119:

Question: Do you know when transcripts—when did you first see transcripts of Ms. Hanson's deposition for the IG?

Answer: Sometime around—sometime after July 8 but before July 13.

Question: And did you help to prepare the Secretary for his testimony in the deposition?

Answer: Yeah, later.

It was on the basis of Mr. Schmalzbach's testimony, who again is at Treasury—what's his position at Treasury? Assistant General Counsel—that Ms. Black was advised that sometime between July 8 and 13 the transcripts were sent over. Was she aware of that? She testified she wasn't. Was that proper procedure? The Chairman makes the point that clearly unless Mr. Schmalzbach was less than honest, I don't believe he would have given this testimony, the fact is that these depositions were sent between July 8 and 13.

Senator SARBANES. Does Ms. Black know that of her own knowledge?

The CHAIRMAN. The question was put to——

Ms. BLACK. No, sir.

The CHAIRMAN. Well, I understand that, but I have to tell you, and we will have Mr. Schmalzbach here tomorrow, and if he wants to recant his testimony, he'll have that opportunity to do that. But the fact of the matter is that depositions were released improperly, certainly sent over to the very people who are being investigated, and there is no way you can have a credible investigation when that is taking place.

Ms. Black is very clear that on July 5 she advised strongly against this. Memos introduced here indicate very clearly that people were upset and Ms. Kulka was concerned, and Mr. Ryan was asked to get involved in that matter to head this off.

This was not conducted in an ordinary way. It's like if the FBI investigated a bank and the depositions of the bank employees were funneled to the higher-level officials under investigation who run the bank. That's what it would appear like.

I certainly have not rushed to judgment, but the documents, the memos, the E-mail, the testimony of the four investigators here I think is very, very convincing and very, very powerful, and they have no way of knowing whether their investigation was thwarted as a result of the leaked depositions. They just don't know what witnesses were told before they testified.

Senator SARBANES. Mr. Chairman, we'll have Mr. Schmalzbach here tomorrow. He testified:

Question: Did you show the transcripts to anybody?
Answer: No.
Question: Did you discuss them with anybody except Ms. Kerner?
Answer: I'm not even sure. I don't believe I discussed them with Ms. Kerner and I did not discuss them with anyone else.

Now, he will be here tomorrow, but Ms. Black, I just want to be very clear. You were put questions which assumed a certain state of facts and you responded on the basis of those facts. You have no knowledge of those facts of your own accord; is that correct?

Ms. BLACK. I have no knowledge of when the Treasury OGC got the transcript or what they did with them, sir.

Senator SARBANES. Mr. Ben-Veniste.

Senator BOND. I thought I had the floor a few minutes ago and something kind of happened to it.

Ms. BLACK. If I may just add to the response I made to the Senator just then. I had no knowledge until about the 21st, when we were told that Treasury GC had them. That's really the only knowledge I have.

The CHAIRMAN. Senator Bond. Then we'll go to Mr. Ben-Veniste.

Senator BOND. Ms. Black, I want to finish up very quickly. You made it clear on July 5 that there should not be depositions turned over, then you said here they go again. We were investigating improper disclosures by the Treasury or RTC to the White House and in the course of our investigations, they are doing the same thing all over again. That's what you found out subsequently when you learned that the transcripts had been turned over unredacted?

Ms. BLACK. That was my reaction, yes, sir.

Senator BOND. That was your reaction.

Well, I want to express my appreciation to all of you as professionals who stood up for what you believe was right and what your responsibilities were, and quite frankly, apparently after the July 5 discussion, when you were very firm that it was your view that these should not be turned over, you were just cut out of the loop.

If you feel that it is deja vu all over again, we discussed earlier today that not only were there improper contacts, in our view, between the White House and the Treasury–RTC, but I would have to say, Mr. Chairman, when we asked the Treasury, I asked for the record whether there had been such a communication by the IG as to the propriety of that turnover. The response was not forthcoming. There was not—once again, the Treasury has failed to tell us what actually went on, which raises to a significant degree the concern about not only did they turn the information over, but they had a great deal of difficulty telling us the truth that they had turned it over.

Mr. Chairman, I think that is something that we are going to have to consider and ponder at greater length. I would like to express my personal appreciation for the work of the professionals before us today. I thank the Chair.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I would like to return again to this issue, because it's a serious question, if there was, in fact, some intent to disseminate material that shouldn't be disseminated. I focus on the question, again, of the redactions.

Now, Mr. Adair, I take it you did not know that there was—if there was any information that had not yet been in the public domain contained in the deposition transcripts; is that correct? You did not know at the time that your investigation was concluded?

Mr. ADAIR. I'm not recalling exactly what was in the transcripts at that time. There was a lot to read, as you can recognize.

Mr. BEN-VENISTE. I'm sure there was, but the issue of whether the transcripts——

Mr. ADAIR. We did know they needed to be redacted.

Mr. BEN-VENISTE. You knew they had to be reviewed, and Ms. Kulka made that point—and you have heard Ms. Kulka's testimony—that there was nothing in the unredacted transcripts that in any way interfered materially with her investigation. Now, my question following up on Senator Sarbanes' earlier question is whether you knew that the material in those transcripts that you wound up redacting at the last minute was, in fact, material that had found its way into the public record through leaks or otherwise?

Ms. Black, did you take cognizance at the time of the distinction between what had been leaked by people at the RTC in one way or the other versus what your procedures would be for releasing information?

Ms. BLACK. Yes, I took cognizance of that difference.

Mr. BEN-VENISTE. OK. Did you redact only material that had not yet fallen into the public arena?

Ms. BLACK. No, sir, I redacted material that RTC considered privileged and confidential.

Mr. BEN-VENISTE. Much of what you redacted was the fact that there were nine criminal referrals coming from the Kansas City RTC Office; correct?

Ms. BLACK. To the best of my knowledge, sir, the RTC has yet to confirm how many investigations it conducted.

Mr. BEN-VENISTE. They may not have confirmed it, but there's some people who have been in this room who have written extensively about it in the newspapers of this country.

Did you not know that Jean Lewis, the principal investigator from the RTC Kansas City Office, delivered all of the confidential—the nine referrals and the supporting documents in February 1994 to Congressman Leach?

Ms. BLACK. I am aware that Ms. Lewis delivered certain materials to Congressman Leach.

Mr. BEN-VENISTE. But you don't know whether it was the referrals and the supporting documents?

Ms. BLACK. I believe that those documents were among them, yes.

Mr. BEN-VENISTE. You don't know that those documents——

Ms. BLACK. I don't know. I've never set down with Mr. Leach and asked him what he has, nor have I viewed it.

Mr. BEN-VENISTE. Nor did you sit down and ask Ms. Lewis what she had delivered?

Ms. BLACK. No, sir, I don't know. No, sir.

Mr. BEN-VENISTE. Are you saying that you didn't keep track of the newspaper stories about the Madison referral that Ms. Lewis had worked on?

Ms. BLACK. I read the newspaper stories. I don't believe everything I read in the paper, sir.

Mr. BEN-VENISTE. I understand that that may be an appropriate response, but whether or not you believed what was there, much of what had been written about was also the subject of what you felt you needed to redact because it hadn't been officially sanctioned for public release.

Am I correct?

Ms. BLACK. I performed the redactions based upon what RTC still considered privileged and confidential, yes, sir.

Mr. BEN-VENISTE. Not upon what Ms. Lewis may have given to Congress or released to her own lawyer or to others or what had appeared in the newspapers; is that right?

Ms. BLACK. That is correct, yes, sir.

The CHAIRMAN. Let me thank each and every one of the witnesses. I have to tell you—and I will make an observation here—that I recognize that you are under tremendous pressures, but I have not seen a panel so candid and so forthcoming as the four of you. I have seen others who say one thing one day and then under pressure—and I am not suggesting that new information can't refresh your recollection—have total memory lapses.

So let me thank you for your testimony, your work, and your candor. I was not aware of how you would testify nor had I seen any of the documents. I made it a practice not to do that so that I do not inadvertently comment to the media on something not already public. After you see information, then you don't know whether you're commenting on something that's appropriate or not, so that's why I found this not only enlightening, but very disturbing.

I thank you.

We stand in recess. We will reconvene tomorrow at 10 a.m.

[Whereupon, at 3:56 p.m., the hearing was recessed, to reconvene at 10 a.m., on Wednesday, November 8, 1995.]

[Appendix supplied for the record follows:]

X000903

DEPARTMENT OF THE TREASURY

TREASURY NEWS

1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE
MARCH 3, 1994

STATEMENT OF TREASURY SECRETARY LLOYD BENTSEN

I have confidence in the Treasury officials, but to ensure that all ethical guidelines were followed, I have instructed the matter be referred to the Office of Government Ethics for a thorough review. I did not attend any of these meetings, nor was I informed of any of these meetings.

I have instructed Treasury officials to have no contact with the White House about this case.

###

MACK - PER JOEL -
"THIS WILL COVER
US SO WE DON'T
HAVE TO DO
ANYTHING FURTHER."
P.

LB-681

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 27, 1994

MEMORANDUM FOR ROBERT P. CESCA
DEPUTY INSPECTOR GENERAL

FROM: EDWARD S. KNIGHT Edward S. Knight
EXECUTIVE SECRETARY AND
SENIOR ADVISER TO THE SECRETARY

SUBJECT: *Congressional Staff Requests for Witness Interview Transcripts*

I have advised the Secretary that you have received a request from the staff of the Senate Banking Committee for transcripts of your inquiry into the Treasury/White House contacts. Because your inquiry is intended to support the Office of Government Ethics in responding to the Secretary's request for its opinion, your inquiry cannot be considered complete until the Office of Government Ethics has advised you that it has all of the information necessary to issue its opinion. Accordingly, the Secretary has asked me to inform you that he believes that none of the transcripts of witness interviews conducted in the course of your investigation should be released outside of the Executive Branch until your report is finalized and the Office of Government Ethics has provided the Secretary with its opinion.

PMB - [illegible]

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUN 27 1994

MEMORANDUM FOR JEAN E. HANSON
GENERAL COUNSEL

FROM: ROBERT P. CESCA
DEPUTY INSPECTOR GENERAL

SUBJECT: Provision of Legal Advice and Services to OIG

As you know, the Inspector General has been requested to carry out an investigation into communications between Treasury employees and White House staff concerning the collapse of Madison Guaranty Savings and Loan, and related matters. It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

In addition, a separate job element, concerning the provision of legal advice and services in connection with this specific investigation, will be added to Ms. Kerner's performance standards for rating periods July 1, 1993 through June 30, 1994, and July 1, 1994 through June 30, 1995. The determination on relative job significance and job element performance for this job element will be at the sole discretion of the Inspector General. Moreover, we have agreed that the overall rating of Ms. Kerner's performance in each of these rating periods will need to receive the concurrence of the Inspector General.

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review. Should you have any questions concerning this arrangement, please feel free to call me directly.

cc: Dennis I. Foreman
Francine J. Kerner

Cesca

ATTORNEY-CLIENT PRIVILEGE/WORK PRODUCT

PRIVILEGED

To: Steven A. Switzer@IG@RTCDC
Cc:
Bcc:
From: Patricia M. Black@IG@RTCDC
Subject: re:
Date: Wednesday, July 27, 1994 8:22:15 EDT
Attach:
Certify: N
Forwarded by:

Our meeting of yesterday began at 9 and ended about 4. Fun stuff.

Anyway, we are now pushing to get a final report out Friday (OGE's target date). We learned in the meeting that Treasury OGC had released the transcripts of witness interviews to Cutler. This was evidently with the knowledge of the Treasury IG, but nobody told us until after it was done. you recall, when the question of giving the transcripts to the Treasury OGC arose we objected, and they did it anyway and then told us about it later. guess the offices have very divergent philosophies about giving out info. Cutler referenced Kulka's testimony in his appearance before the committee, specifically citing the "Treasury IG's investigation". We are not pleased.

I think Jack sent you Katsano's e-mail and the response. Jack and I drafte that, thinking that we should indicate our procedures and let Treasury defe theirs.

00627

Issues for 7/11 meeting

PRIVILEGED

7/8/94

1.
- Speed we're trying to maintain is hurting the investigation
  i.e. got WH records 7/7 at noon; interviewing Dunham 7/8 in p.m. Records rec'd so late investigators hadn't been able to review them because of other interviews this morning.

Overall point - we need to do all necessary interviews.

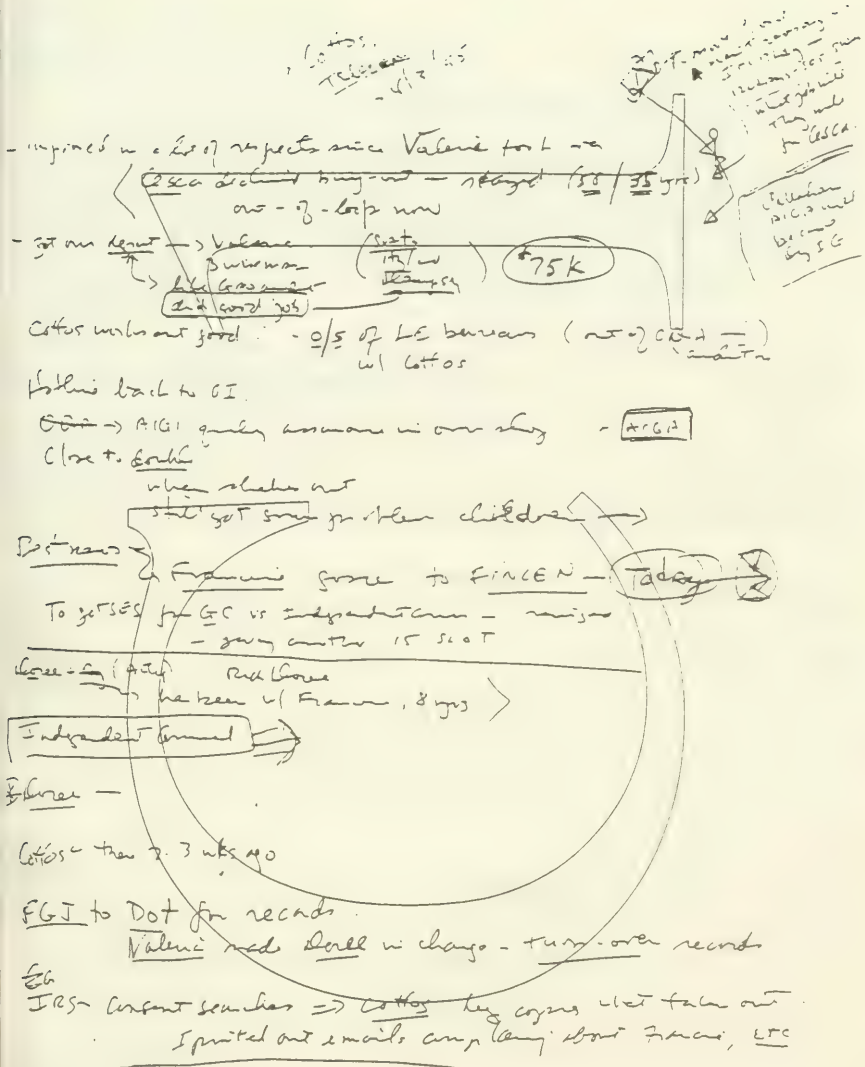
4.
- Report - how much detail
  + suggest sections that spell out a chron, background, authority

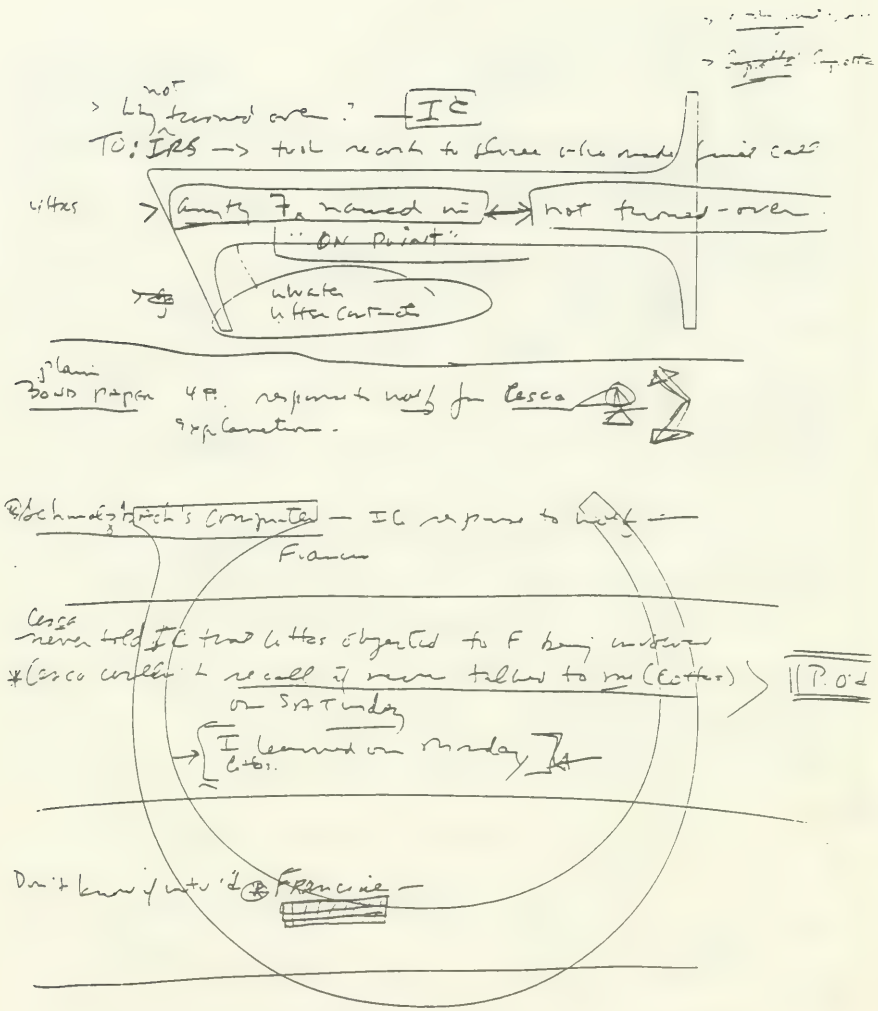
2.
- Treasury Counsel "pulled" Altmans' diaries & kept certain pages. Non compliance with IG Act. NEED to get all !!

. Steiner diaries - his attorney has them.

3.
- Interviews to be done (see next page)

06089




not
> Liz turned over : IC
TO: IRS -> this needs to stress value added
Letters
Empty 7a marked no
not turned-over
"ON Point"
Yes
where letter sent
Plans
Bond paper 4pp. response wait for Cesca
explanations.
Richard's computer — IC response to
Francis
Cesca never told IC that letters objected to F being withdrawn
*(Cesca called & recall it never talked to me (Esther)
P.O.
on Saturday
I learned on Monday
Don't know if told
Francine

025533

From: Kenneth Schmalzbach
To: KNIGHTE
Date: 7/28/94 10:44am
Subject: Ryan and Adair telephone calls

Ed, the next call this morning should be deferred until after 11:30, and it should be to Ryan, not to Adair.

I just heard from IG Counsel Francine Kerner, who is meeting with RTC IG people to determine final changes to the IG's chronology. At 11:30, that group will meet with Ellen Kulka, who is expected to argue that the transcripts of the I.G.'s interviews should not be released at all with the IGs' report. If she fails in that argument (as the IGs are determined that she will), she must be asked to review the transcript for any nonpublic information because her shop has the technical knowledge of the Madison investigation necessary to do so. There is concern that she may drag her feet on completing the task.

Accordingly, you need to place the call to Jack Ryan, the deputy CEO at RTC, and not to Jack Adair. Kulka reports to Ryan, and it must be Ryan who presses her to accomplish the task completely and quickly.

You also need to be aware of a piece of background. Counsel to RTC's IG, Pat Black, is telling this morning's gathering of the IG people working on the report that if Kulka fails to win on the issue of not making the transcripts public, she is prepared to testify at the hearings that the IGs group has been under the sway of the Secretary in performing their investigation. Kulka HAS NO FACTS TO SUPPORT THAT PERSPECTIVE AND I DON'T BELIEVE THERE'S ANY BASIS FOR THAT PERSPECTIVE. However, you need to be sensitive to this issue as you talk to Ryan.

I expect to hear from IG Counsel how the meeting with Kulka went at about noon. I will call you and give you revised talking points for the Ryan call as soon as I hear from IG Counsel.

PRIVILEGED

To: Clark W. Blight@IG1@RTCDC
Cc:
Bcc:
From: Steven A. Switzer@IG@RTCDC
Subject: report
Date: Wednesday, July 27, 1994 12:48:34 EDT
Attach:
Certify: N
Forwarded by:

Clark,
My comments on the draft are limited to just one main one. I suppose in their wisdom (and haste) Treas folks decided not to even mention the Ludwig contact

Otherwise, Pat and Jack have shared their e-mail traffic with me about Treas OGC sharing copies of transcripts with the WH. Does that action possibly violate the brand new WH rules about what they will and will not do in connection with investigations by regulartory or law enforcement agencies?

We can discuss on Friday when I return.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, NOVEMBER 8, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:30 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order at this point. Our first panel, Mr. Cesca, James Cottos, and Francine Kerner, will you all rise for the purposes of taking the oath.

[Whereupon, Robert Cesca, James Cottos, and Francine Kerner, were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Before we start, the Committee would be interested in taking any statements that any of you might wish to offer to the Committee.

Ms. KERNER. I have a statement, sir.

The CHAIRMAN. Yes, please, Ms. Kerner.

SWORN TESTIMONY OF FRANCINE KERNER
DEPUTY COUNSEL, FINANCIAL CRIMES ENFORCEMENT NETWORK, U.S. DEPARTMENT OF THE TREASURY
FORMER COUNSEL TO THE TREASURY DEPARTMENT OFFICE OF THE INSPECTOR GENERAL

Ms. KERNER. My name is Francine Kerner——

Senator SARBANES. Ms. Kerner, if you could pull that microphone closer to you, that would help.

Ms. KERNER. Thank you, Senator.

My name is Francine Kerner. I'm currently serving as Deputy Counsel at the Financial Crimes Enforcement Network, which is an agency of the U.S. Department of the Treasury. I would like to tell you a bit about my background as a career civil servant over the last 20 years.

After graduating from the New York University School of Law in 1974, I served as an Assistant District Attorney in the Kings County District Attorney's office which is in Brooklyn, NY. When I left

the office in 1979, I was a senior trial attorney in the Major Offenses Bureau and was responsible for handling some of the most serious felony cases in the county.

In 1979, I assumed the position of Counsel to the Inspector General at the U.S. Department of Commerce in Washington, DC. In 1984, I was promoted into the Senior Executive Service by Mr. Sherman Funk who had been appointed by President Reagan. As Counsel to the Inspector General, I was responsible for directing investigations involving allegations of fraud against the Government and misconduct by senior agency officials.

My work on these cases resulted in several multimillion-dollar recoveries to the Federal Government, criminal convictions, disciplinary actions, and resignations. In 1989, after the birth of my son, I accepted a part-time attorneys position in the Office of the Assistant General Counsel for Administration at Commerce. In this position, I was primarily responsible for providing ethics advice to senior officials at the Department and implementing a nationwide ethics training program for Commerce employees.

As a result of this work in 1991, I received the Department's Silver Medal Award from Secretary Mossbacher. I also received an award for outstanding performance from the General Counsel, Wendell Willkie, III.

In 1992, when I was ready to go back to work full-time, I competitively applied for the position of Counsel to the Inspector General at the U.S. Department of the Treasury. I was told that over 100 individuals applied for the position. After a series of interviews, J. N. Archibald, the General Counsel; and Donald Kirkendahl, the Inspector General, both Bush Presidential appointees, selected me for the position.

As Counsel to the Inspector General at Treasury, I again had responsibilities for providing legal advice and services in connection with OIG investigations.

In late winter or early spring 1994, I learned that the Treasury Office of Inspector General, at the request of Secretary Bentsen, would be conducting a management inquiry into the Treasury–White House contacts involving the collapse of Madison Guaranty Savings & Loan.

This management inquiry was not a criminal investigation. A criminal investigation into the same subject matter had been conducted by the Independent Counsel, Mr. Fiske, and criminal charges had been declined. In contrast, the purpose of the Office of Inspector General's management inquiry was to produce an accurate, complete, and fair account of the events in question, that could be relied upon by the managers of the Department, the Secretary, and the Office of Government Ethics.

Congressional hearings had been scheduled. It was considered important for the Office of Government Ethics to determine whether there had been any violations of the standards of conduct. The Secretary, who was testifying at the hearings, needed to review the results of the OIG investigation in order to provide accurate and complete testimony, and to ensure that he took any corrective management action he deemed appropriate.

In addition, the OIG report was to be distributed to Congress and members of the public. In anticipation of the investigation, I

told Dennis Foreman, the Deputy General Counsel, that four things needed to be done concerning my employment relationships.

First, my reporting chain would have to be altered. On any matters relating to the investigation, I would have to report solely to the Inspector General.

Second, a separate job element concerning my provision of legal advice and services in connection with the OIG investigation would have to be added to my performance standards.

Third, the evaluation of my performance for this job element would have to be at the sole discretion of the Inspector General.

Finally, the overall rating of my performance would have to receive the concurrence of the Inspector General.

Mr. Foreman, who was also the designated agency ethics official, agreed. As a result of my discussions with Mr. Foreman, I drafted the memorandum on the provision of legal advice and services that was signed by Mr. Cesca, Robert Cesca, the Acting Inspector General and sent to Jean Hanson on June 27, 1994. This agreement was directly patterned on those in existence at various Federal agencies throughout the Executive Branch.

Furthermore, the provisions of this agreement have been adhered to scrupulously. Jane Ley, the Deputy General Counsel at OGE, reviewed and inspected the memorandum as providing adequate safeguards for independence.

One point I'd like to make. The intent of this memorandum was not to sever communications with those Treasury employees who continued to work directly on behalf of the Secretary in preparing for the Congressional hearings. Although Mr. Cesca instructed me not to talk to Dennis Foreman or Jean Hanson about any matter during the pendency of the OIG's investigation, a direction I followed to the letter, both he and Jim Cottos, the Assistant Inspector General, Inspector for Investigations, knew that I had a need to communicate with and did, in fact, communicate with the career civil servants who were reporting to Edward Knight, Secretary Bentsen's Executive Secretary.

One of these career civil servants was Kenneth Schmalzbach, the Assistant General Counsel for Administration. He was also one of the same career civil servants whom the Senate Committee on Banking, Housing, and Urban Affairs communicated with during this same period of time.

During the hearing yesterday, Jack Adair, the Inspector General of the Resolution Trust Corporation, testified that it was appropriate for Secretary Bentsen to get copies of the witness transcripts of interviews conducted by the Office of Inspector General in order to prepare for Congressional hearings. It was for this purpose that I, with the concurrence of Mr. Cesca and Mr. Cottos, provided copies of the transcript to Mr. Schmalzbach.

In accepting these transcripts for Secretary Bentsen, Mr. Schmalzbach told me that Secretary Bentsen had placed the same restriction on himself and his staff that he subsequently placed on Mr. Cutler. Secretary Bentsen would not permit the transcripts to be used, shared among agency employees until the Senate Banking Committee had completed its depositions.

By E-mail dated July 18, I apprised Mr. Cesca and Mr. Cottos of the internal restriction which Secretary Bentsen had placed on

use of the transcripts. I have no reason to believe that Mr. Schmalzbach or anyone else at the Department of the Treasury did not honor this self-imposed restriction.

Regarding my participation in the investigation conducted by the Office of the Inspector General, I had several functions, including a liaison function. One of my primary responsibilities was arranging witness interviews and obtaining documentary evidence from Defense Counsel. In addition, I proposed questions for possible use during the interview process. Any objective review of these questions, which have been supplied to the Committee, indicates that I supported a most probing and comprehensive investigation.

Although I supplied the questions, which the investigators were free to use or reject as they saw fit, at no time did I attend any witness interview.

I was also one of a number of people who suggested changes to the draft chronologies. Every suggestion I made was tied back to a specific page of the witness transcripts. At no time did I have the final responsibility for drafting any portion of the Office of Inspector General report.

The last drafting session, held at the Resolution Trust Corporation in Rosslyn, VA, on July 28, was attended by both Inspectors General, both the Assistant Inspectors General for Investigation, the investigators from both agencies, and both Counsels of the Inspectors General. No change was made to the chronology without a group consensus, nor was I in charge of the investigation in any way.

A statement was also made at the hearing yesterday that I edited the report issued by the Office of Government Ethics. I did not edit that report. I never saw a copy of that report until it was issued.

Concerning redactions to the witness transcripts, it was my understanding from the beginning of the investigation that witness transcripts were to be made public in their entirety. In fact, investigators avoided delving into the specific details of the criminal referrals so as not to create any problem with release of the transcripts.

On July 23, 1995, when Mr. Cesca agreed to have the witness transcripts available to Mr. Cutler, the transcripts were to be publicly released in their entirety in about a week. To the best of my memory, not one word about redacting the transcripts was ever raised with anyone at Treasury until the week of July 25, 1995, when Patricia Black identified redaction as an issue.

There was no reason for the witness transcripts to be redacted. There was no information in the transcripts that would tip off a possible defendant to the fact that he was being investigated, nor was there any information that would give a defendant a possible leg up in defending against prosecution.

At a meeting at the Resolution Trust Corporation on July 28, the same day we had the final drafting session, there was also a meeting attended by Mr. Adair, Ms. Black, Mr. Cesca, Ms. Kulka, two attorneys on her staff, and myself. At that meeting, I strenuously argued against the need for redacting any material in the transcripts, insisting that the plan had always been to make a full disclosure to Congress and the public.

Neither Mr. Adair nor Ms. Black contradicted my position. Nonetheless, at the end of the meeting, based on Ms. Kulka's opinion, it was agreed that her staff would review the transcripts and identify material for redaction. Much to my amazement, the first redaction proposed involved scotching the fact that the President and Mrs. Clinton had been mentioned as possible witnesses in the criminal referral. At that, I threw up my hands, declaring that we might as well scrap the whole report.

After a brief discussion, it was agreed that the mention of the President and Mrs. Clinton would remain in the report. Today, I have the same opinion I had on July 28, 1995. There was no sensitive information in the witness transcripts, no information that should have been redacted.

That brings me to the last point I'd like to make which concerns the July 28 E-mail from Kenneth Schmalzbach to Edward Knight. As you have heard, it was Secretary Bentsen's intent to make the transcripts public in their entirety. When the issue of redacting the transcripts was raised at the 11th hour, it was important for the Secretary to be notified of this development. I apprised Mr. Schmalzbach of this situation so that the Secretary's office could be prepared to respond, if necessary.

This concludes my prepared remarks. I'll be pleased to answer all your questions. Thank you very much.

The CHAIRMAN. Do any of the other witnesses have any remarks or opening statements that they would like to make?

SWORN TESTIMONY OF ROBERT CESCA
EXECUTIVE ASSISTANT, INSPECTOR GENERAL FOR AUDIT
U.S. DEPARTMENT OF THE TREASURY
FORMER DEPUTY INSPECTOR GENERAL

Mr. CESCA. I do not have an opening statement, Senator.

SWORN TESTIMONY OF JAMES COTTOS
ASSISTANT INSPECTOR GENERAL, INVESTIGATIONS
TREASURY INSPECTOR GENERAL

Mr. COTTOS. No, I do not have an opening statement, Senator.

The CHAIRMAN. At this time we'll turn to Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. Kerner, based on something you said, I want to be quite clear. Do you deny that it was known as early as the first week of July that the RTC was concerned that some of the material in the interviews of their personnel would have to be redacted?

Ms. KERNER. Absolutely. I was not aware of that fact.

Mr. CHERTOFF. Are you saying you weren't aware or are you saying you deny that it was expressed?

Ms. KERNER. It wasn't expressed to me. I was unaware of it.

Mr. CHERTOFF. Did you ask other people at Treasury whether they had heard about it?

Ms. KERNER. I was, to use a word that came up yesterday, shocked to find the week of July 25 that they wanted material redacted.

Mr. CHERTOFF. Ms. Kerner, the question is, before the week of July 25, did you ask anybody at Treasury or anybody at the RTC

whether there were any concerns about confidential information in the transcripts; yes or no?

Ms. KERNER. I didn't ask them, and they didn't tell me that. No.

Mr. CHERTOFF. When you say there weren't any concerns expressed, what you mean is you didn't know of any concerns until July 25, and you didn't ask about it before then; right?

Ms. KERNER. Well, we were talking about things as we went along, and the whole point was that the transcripts were going to be made public. So if there was going to be any redacting to be done, it seems strange to bring that up the day before we're about to issue the report. Yes, sir, I found that strange.

Mr. CHERTOFF. You don't know that it wasn't brought up. All you are saying is you don't recall it being brought up to you. Would it surprise you to learn, for example, Mr. Dougherty, in the Office of the General Counsel, testified a couple of days ago that he knew as of the first week of July that there were going to be redactions?

Ms. KERNER. Well, I don't know how he would know that. He was not involved with running the investigation, but if he says so, that's in the General Counsel's Office.

Mr. CHERTOFF. Now, let me turn to you, Mr. Cottos, for a second because Ms. Kerner raised the issue of this document or this letter which limits her reporting relationships to the Office of the General Counsel. Was it your understanding going into this—and you were the chief investigator; right?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. You were the person who was actually running the investigation; correct?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. For the Treasury?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. Was it your understanding that a principal focus of the investigation was the behavior and conduct of people in the General Counsel's Office of Treasury, including Ms. Hanson and Mr. Foreman, and possibly Mr. Bowman?

Mr. COTTOS. Yes, it was.

Mr. CHERTOFF. Did that cause you a concern when you learned that Ms. Kerner who was a part of that component was going to be acting as Counsel to the Inspector General in this inquiry?

Mr. COTTOS. Yes, it did.

Mr. CHERTOFF. Tell us what your concern was.

Mr. COTTOS. My concern was that even with the letter that was signed, her overall evaluation would still be done by the General Counsel's Office. There was only one element that was going to be evaluated by the Inspector General. The rest of her evaluation would be done by the General Counsel's Office. That was my concern.

Mr. CHERTOFF. So basically the General Counsel's Office, which was going to be the subject of the investigation, essentially held Ms. Kerner's career in the palm of their hand, right, in the vernacular?

Mr. COTTOS. They would be doing her evaluation, yes, sir.

Mr. CHERTOFF. Did the RTC investigators working on the case express a similar concern to you about Ms. Kerner's role in the investigation?

Mr. COTTOS. Yes, they did.

Mr. CHERTOFF. I want to direct your attention, Mr. Cottos, to the actual letter itself. I think you all have a copy of it before you. It's dated June 27, 1994. It's document No. 389.

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. Did you see a copy of this letter in late June or early July 1994?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. I want to read the second paragraph in:

> Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization of the Inspector General.

Did you understand that paragraph to mean that Ms. Kerner was not to talk to the members of the General Counsel's Office about any information about the substance of the inquiry, or to report to them on any matters relating to the investigation?

Mr. COTTOS. That was my understanding, sir.

Mr. CHERTOFF. Were there any exceptions that you were aware of, any side exceptions or footnotes that said that she could talk to Mr. Schmalzbach and Mr. McHale and Mr. McNamara, and other members of the General Counsel's Office.

Mr. COTTOS. The only exception would be that Ms. Kerner was responsible for setting up the interviews with the Office of the General Counsel for us.

Mr. CHERTOFF. So she could schedule witnesses to appear; right?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. To your knowledge, as of the time that this letter was written, was she, for example, supposed to be communicating with the members of the General Counsel's Office about the transcripts and the information obtained in the interviews?

Mr. COTTOS. Not to my knowledge.

Mr. CHERTOFF. Was she supposed to be reporting to members of the General Counsel's Office about meetings that were held among members of the Inspectors General offices to talk about the report?

Mr. COTTOS. No, sir.

Mr. CHERTOFF. Now, did you have a conversation with Ms. Kerner in early July concerning her efforts to make direct contact with some of your investigators?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. Would you tell us about that.

Mr. COTTOS. During the first interview that was taking place over at the RTC building, the telephone rang during the interview. The investigator picked up the phone, and it was Ms. Kerner, and she wanted to know how the interview was going. The investigator said I'm in the middle of an interview, I can't talk now and put down the phone. At the conclusion of the interview, he called me and wanted to know why Francine Kerner was calling him during the interview.

Mr. CHERTOFF. What did you do?

Mr. COTTOS. I was very upset she had called during the interview, and I sent an E-mail to her telling her that I wanted her contacts with the investigators to go through me.

Mr. CHERTOFF. Mr. Cesca, you have this same letter in front of you, of June 27.

Mr. CESCA. Yes, I do.

Mr. CHERTOFF. You have listened to my reading of that second paragraph.

Mr. CESCA. Right.

Mr. CHERTOFF. Now, was there a side letter or agreement saying that information should be shared with Mr. Schmalzbach or Mr. McHale?

Mr. CESCA. There was no side letter, but I was aware that, eventually, Ms. Kerner did provide Mr. Schmalzbach with copies of the transcripts.

Mr. CHERTOFF. Let's get to that, then. When were you aware of that?

The CHAIRMAN. Mr. Cesca, would you pull that microphone up closer, please.

Mr. CESCA. I'm sorry.

Mr. CHERTOFF. When did you become aware of that?

Mr. CESCA. On July 18.

Mr. CHERTOFF. How did you become aware of it?

Mr. CESCA. I received an E-mail—I was cc'd on an E-mail message from Ms. Kerner in which she mentioned that copies of the witness transcripts would be communicated to the Assistant General Counsel for Administration.

Mr. CHERTOFF. That's Ken Schmalzbach?

Mr. CESCA. That's Ken Schmalzbach.

Mr. CHERTOFF. He's in the General Counsel's Office.

Mr. CESCA. That's correct.

Mr. CHERTOFF. He works under Jean Hanson.

Mr. CESCA. That's correct.

Mr. CHERTOFF. Did you have an earlier discussion with Ms. Kerner about that?

Mr. CESCA. I don't recollect a discussion but I'm not going to say that we did not have it. We could very well have had some discussion. We worked very closely during the entire investigation. There was a lot of communication going on.

Mr. CHERTOFF. But you don't recall it.

Mr. CESCA. I don't recall it.

Mr. CHERTOFF. What about you, Mr. Cottos, did you talk to Ms. Kerner before she sent the transcripts up to the General Counsel's Office?

Mr. COTTOS. No, I did not.

Mr. CHERTOFF. The first you heard about it was also July 18 through this E-mail?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. Mr. Cesca, I want to be very clear. This E-mail on July 18 was the first indication you got that transcripts actually moved up?

Mr. CESCA. That's correct.

Mr. CHERTOFF. Ms. Kerner, is it, in fact, the case that you didn't send any transcripts up to Mr. Schmalzbach until July 18?

Ms. KERNER. I don't recall. He recalls that he got transcripts earlier and that I pulled them back.

Mr. CHERTOFF. How do you know what he recalls?

Ms. KERNER. Well, because I discussed it with him, actually.

Mr. CHERTOFF. Let's worry about—I'll bring his memory up in a minute. I want to get to your memory right now. Do you remember transmitting copies of those transcripts as soon as they were prepared in early July up to Mr. Schmalzbach sometime around July 10, or July 11, 1994, a full week before you wrote this memo?

Ms. KERNER. I don't recall that, sir. He recalls it, and I credit his memory on it.

Mr. CHERTOFF. So you don't dispute it.

Ms. KERNER. I am not going to dispute his memory on that point, no.

Mr. CHERTOFF. Then do you dispute his memory that you came back to him on July 13 and asked to get the transcripts back?

Ms. KERNER. That's what he remembers. I have no reason to discredit his memory about it.

Mr. CHERTOFF. Then you sent them up again on July 18; right?

Ms. KERNER. Yes.

Mr. CHERTOFF. That you do remember?

Ms. KERNER. Well, I did an E-mail at that time.

Mr. CHERTOFF. Now, your E-mail doesn't say anything at all about having previously sent the transcripts up and having gotten them back again, does it?

Ms. KERNER. No, it doesn't.

Mr. CHERTOFF. Do you have it in front of you?

Ms. KERNER. I know it well.

Mr. CHERTOFF. Since you've essentially conceded to me now that you don't dispute the recollection that Mr. Schmalzbach has that you had sent them up to him on the 8th, 9th and 10th, taken them back again and sent them back on the July 18, let me ask you, is there any reason why you would have written an E-mail on July 18 making it seem as if the first time you were sending transcripts up was on the July 18 when, in fact, you had sent them up a whole week before?

Ms. KERNER. The purpose of that E-mail was to apprise Mr. Cesca and Mr. Cottos of the fact that all the transcripts had been sent, and in addition, that there was a restriction from the Secretary on the use of the transcripts.

Mr. CHERTOFF. Let's go to the first paragraph of this E-mail because it really appears to me as if this is written in such a way to conceal the earlier delivery and then reclaiming of the transcripts. Look at that first paragraph. It's July, 18, 1994. It's to Mr. Cottos and Mr. Cesca, and it's No. 366.

In accordance with our discussion earlier today, I permitted the Office of the Assistant General Counsel for Administration to copy and retain for their use the witness transcripts in my possession.

Would you agree with me that that paragraph to the person who's reading it, seems as if nothing was transmitted up until you have this earlier discussion on July 18?

Ms. KERNER. I think that could be a fair reading of it.

Mr. CHERTOFF. Yet you don't dispute the fact that transcripts were sent up over a week earlier to Mr. Schmalzbach, and that you then went to him and asked for them back, do you?

Ms. KERNER. That's his memory, I don't discredit his memory.

Mr. CHERTOFF. Putting aside discrediting his memory, since you have evidently had some discussion with him, are you aware of the fact that he made a contemporaneous record on July 13 that he had returned the transcripts to you?

Ms. KERNER. I didn't see that until this morning when your staff gave it to me and I appreciate seeing it. Thanks.

Mr. CHERTOFF. It's part of the package——

Ms. KERNER. It's part of the package, absolutely. Can I just——

Mr. CHERTOFF. Let me——

Senator SARBANES. Why don't we let Ms. Kerner answer.

Ms. KERNER. I'd like to say something else on the question of the transcripts. It was understood, again, from the beginning in their earlier memos about this that I did and which Mr. Cesca and Mr. Cottos were copied. There were discussions from the very beginning that Mr. Schmalzbach, as a representative of the Secretary's office because the Secretary had to turn to someone within the Department. These were the career civil servants that he was relying on. It was the same group that the Independent Counsel had relied on to produce papers, the same group that the Senate Committee was communicating with.

It was understood from the beginning that they were going to get the transcripts of the witness interviews. On July 18 was the day when we started getting witness verifications from the witnesses and started giving back the transcripts to the witnesses so that they could verify the individual transcripts.

Mr. CHERTOFF. I don't want to talk about July——

Ms. KERNER. That was a natural point in the process at which to give the transcripts to Mr. Schmalzbach.

Mr. CHERTOFF. Why did you give it to him a week earlier?

Ms. KERNER. If I gave it to him a week earlier, I made a mistake and rectified it.

Mr. CHERTOFF. You didn't note that mistake in your memo or your E-mail of July 18; right?

Ms. KERNER. It's not noted there, no.

Mr. CHERTOFF. Let me ask you, Mr. Cottos, you indicated, contrary to what Ms. Kerner said, that you actually objected to turning the transcripts over on July 18.

Ms. Kerner, do you deny that Mr. Cottos objected to it?

Ms. KERNER. I certainly didn't get any E-mail back from him objecting to it. I never had any phone conversation with him objecting to it. I do not recall in any way, shape or form any objection on his part.

Mr. CHERTOFF. Did you talk to him about it?

Ms. KERNER. Well, you know, we communicated at that point in time by phone or E-mail, and there is no record, that I'm aware of, that he objected, and I have no memory of his having objected. If he objected, he certainly didn't bring it up with Mr. Cesca. I mean, you know, I wasn't in charge of making these decisions, sir.

Mr. CHERTOFF. But Mr. Cottos, did you object?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. Why did you object?

Mr. COTTOS. I objected from the beginning about the transcripts being given to anyone. I have a long career as a criminal investigator, and I have a problem with transcripts being given to anyone

until the investigation is complete. I said that from the beginning of this investigation.

Mr. CHERTOFF. Can you explain to us what you were concerned about?

Mr. COTTOS. I was concerned about several things. The other witnesses being able to read someone's testimony and possibly tailoring their own. The other concern was that the House Banking Committee was having hearings. People were testifying. I did not want them to see other people's testimony before that Committee.

Also, this Committee was having hearings and people were testifying here, so the concern was that by hearing what someone else would say, they would change their recollection of what happened or possibly change it. That was my concern.

Mr. CHERTOFF. Did you tell—did you talk about those concerns and objections with Mr. Cesca?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. Did you talk about those concerns with Ms. Kerner?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. Your understanding is that on July 18 those transcripts went out?

Mr. COTTOS. That's correct.

Mr. CHERTOFF. Did you know that Mr. Schmalzbach and Mr. McNamara at a point in time were involved in considering preparation not only for Secretary Bentsen's testimony but for the testimony of other Treasury witnesses, including Mr. Altman and Ms. Hanson?

Mr. COTTOS. I found that out later, yes, sir.

Mr. CHERTOFF. Does that fact increase your concern about the fact that these transcripts were transmitted up to them?

Mr. COTTOS. Yes, it certainly does.

Mr. CHERTOFF. Do you remember Mr. Bowman?

Mr. COTTOS. Yes, I do.

Mr. CHERTOFF. Was Mr. Bowman part of the General Counsel's Office?

Mr. COTTOS. Yes, he was.

Mr. CHERTOFF. Was he someone who was interviewed or deposed in the course of this investigation?

Mr. COTTOS. Yes, he was.

Mr. CHERTOFF. Do you remember he raised an objection when he was first approached about being deposed?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. What was that?

Mr. COTTOS. During the course of one of the other interviews, Mr. Bowman was identified as a witness. He was not on our initial list of people to be interviewed. One of the investigators called me and said we need to interview John Bowman, and I got his number and said go ahead and call him.

The investigator called him and Mr. Bowman's response was no, I'm not going to be interviewed because my name is not on the list and I haven't been briefed.

Mr. CHERTOFF. What did you understand the objection here, that he hadn't been briefed yet?

Mr. COTTOS. First of all, I was concerned about why he was aware of what names were on the list. No. 2, I was concerned about any briefing that was taking place.

Mr. CHERTOFF. Did you ever find out who was briefing him, or how he became aware that his name was on a list?

Mr. COTTOS. No, I did not.

Mr. CHERTOFF. Did you know that he had an assistant named Sara Jones, or something else, who was actually involved in preparing summaries of the depositions that were produced up to the General Counsel's Office?

Mr. COTTOS. No, I did not.

Mr. CHERTOFF. Did anyone ever raise the propriety of that with you?

Mr. COTTOS. No, they did not.

Mr. CHERTOFF. What about you, Ms. Kerner, did you know summaries were prepared?

Ms. KERNER. At some point, I was actually given a copy of them.

Mr. CHERTOFF. Did you know there was a group of lawyers in the General Counsel's Office taking the transcripts you had sent up and preparing summaries?

Ms. KERNER. They were the attorneys who worked for Ken Schmalzbach, who I understood was reporting to Edward Knight, the Executive Secretariat. That group of lawyers, Peter Rittling or David Dougherty, anyone else who worked for Ken Schmalzbach was working on this matter. That's what I understood.

Mr. CHERTOFF. You didn't know that one of them was working directly for Mr. Bowman who was a witness?

Ms. KERNER. No, I didn't know that.

Mr. CHERTOFF. No one asked you about that?

Ms. KERNER. No.

Mr. CHERTOFF. Now, let me turn to the issue of editing transcripts. You indicated, Ms. Kerner——

Ms. KERNER. Excuse me, editing the transcripts. You mean redacting them?

Mr. CHERTOFF. No, I'm sorry. Editing the draft report that came up from the Inspector General. You indicated you made edits in the draft report.

Ms. KERNER. I suggested edits to the draft report. They were always reviewed and approved by either Jim Cottos or Mr. Cesca.

Mr. CHERTOFF. Did anybody else in the General Counsel's Office make suggestions about edits that should be put in the report?

Ms. KERNER. Yes, I got a 2½-page sheet from Stephen McHale, who worked for Ken Schmalzbach, tying suggested changes back to the transcripts.

Mr. CHERTOFF. You didn't see any problem in having these kinds of communications about editing or altering or making suggested changes in the Inspector General report, you didn't see that as being inconsistent with this letter here that says no reporting to anybody except the Inspector General about the investigation and no discussion about the substance of the inquiry?

Ms. KERNER. No, it wasn't, and let me get into that, if I might. This memorandum does not say that I can't speak to people who happen to be attorneys in the Department or who worked in the General Counsel's Office. What it says is that I report directly to

the Inspector General and don't get into matters of—the substance of the inquiry.

Now, 1 minute, sir. Please let me finish my answer.

At the point in time, when Mr. McHale gave me back his suggested changes, the transcripts had been sent down to Mr. Schmalzbach's office. Mr. McHale worked for Mr. Schmalzbach. He was his Deputy. Therefore, that office, it was well known they had the transcripts, they were reviewing them on behalf of the Secretary. If they came up with things that they felt needed to be changed, there was nothing wrong with my accepting that and presenting it as a technical work product from people who were in the Executive Secretariat.

Mr. CHERTOFF. Was there a technical——

Ms. KERNER. There was—no, I haven't quite finished.

Mr. CHERTOFF. Ms. Kerner, this is a lengthy answer.

Ms. KERNER. Give me 1 more minute, please, sir.

When I got those suggested changes, I didn't foist them off on anybody as being my own changes. I gave them to Mr. Cottos. They were presented at that July 28 meeting that we've talked about, and I said here are some suggested changes for Mr. Schmalzbach's office.

Then Jim Cottos and the other people in the room went down the changes one by one, and they voted them up or they voted them down. So if there was a change that improved the chronology, it was accepted. If somebody in the room didn't think it improved the chronology, it was rejected. It was an open process, sir.

Mr. CHERTOFF. Ms. Kerner, I have a very simple question. The restriction is neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry.

Ms. KERNER. I didn't communicate any information. They had the transcripts. They read the transcripts. They were communicating with me.

The CHAIRMAN. They shouldn't have even had the transcripts. That's pretty clear. It's pretty clear that you don't want to remember that you first sent it over and then you claimed it back. But you don't dispute his memory.

If you sent the transcripts over, you would remember you sent them over, particularly if you sent a memo a week later, 1 week later. It just seems to me rather disingenuous for you, a skilled lawyer, to come before this Committee, and tell us that you won't dispute his memory, when he has a contemporaneous memorandum that says you sent these materials over, you reclaimed the materials. Now, you come before this Committee and have no recollection of actually having sent those over a week earlier, taking them back and then prepared this comprehensive memorandum?

I have to tell you, Ms. Kerner, it just doesn't make sense. Now, you might say I don't recall. This is not an incidental matter. This is a matter of some significance. It directly violates the rules which were laid down concerning communicating with the very people who are being investigated.

Ms. KERNER. Mr. Schmalzbach was not being investigated.

Mr. CHERTOFF. But the office in which he was working was being investigated; right? Do you have a doubt about that? Was Ms. Hanson being investigated?

Ms. KERNER. She was, sir.

Mr. CHERTOFF. She ran the office?

Ms. KERNER. She ran the office. He was not reporting to her for these purposes.

Mr. CHERTOFF. So you made a decision yourself that you could create a little exception for him. Is that what you're telling us?

Ms. KERNER. It wasn't on my own that I created the exception. It was the method by which I communicated with the Secretary. The Secretary had to rely on someone. When you don't have a Deputy Secretary in the loop, when you don't have the General Counsel in the loop, when you don't have the Deputy General Counsel in the loop, who are you going to turn to? You turn to the career civil servants who fill the void.

Mr. CHERTOFF. In fact, wasn't the Secretary himself a witness, Ms. Kerner?

Ms. KERNER. That decision, and you can ask Mr. Cottos about that, the decision on whether the Secretary would be a witness was not made until very late, possibly not until July 18 or July 19. He was not interviewed on July 20, and it was a last-minute decision, sir, on whether or not he would be——

Mr. CHERTOFF. So your testimony is that it didn't occur to you, based on Mr. Altman's testimony about conversations with Mr. Bentsen, or Ms. Hanson's testimony, that he would be a witness.

Ms. KERNER. No, sir, I'm not saying that. In fact, I was one of the people who always supported an interview of the Secretary, absolutely.

Mr. CHERTOFF. Now, Mr. Cottos, let me ask you this. Let me get back to this issue of the edits proposed by Ms. Kerner. Did you see those edits?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. What was your reaction to them?

Mr. COTTOS. I was concerned about some of them.

Mr. CHERTOFF. Why?

Mr. COTTOS. Because I felt they were slanting the facts or attempting to slant the facts that we had gathered in the initial draft.

Mr. CHERTOFF. And did you communicate your concerns to Ms. Kerner?

Mr. COTTOS. Yes, I did.

Mr. CHERTOFF. What did you tell her?

Mr. COTTOS. I told her I was very concerned about the direction of some of these comments that she had given me.

Mr. CHERTOFF. Specifically, did you tell her in substance that you thought she was acting as a defender of Jean Hanson?

Mr. COTTOS. I believe I made the comment that we were not the Jean Hanson defense team, yes, sir.

Mr. CHERTOFF. Now, when these other recommended changes came in from Mr. Schmalzbach and the Office of the General Counsel, is your memory in agreement with Ms. Kerner that Ms. Kerner told the assembled people that these were suggestions coming from Mr. Schmalzbach?

Mr. COTTOS. No, it is not.

Mr. CHERTOFF. Where did you think they were coming from?

Mr. COTTOS. I thought they were coming from Ms. Kerner.

Mr. CHERTOFF. Still on the issue of reporting back to people other than the Inspector General, Ms. Kerner, you had testified a little earlier about this meeting with Ellen Kulka and the Inspectors General on July 28 where the issue of redactions came up.

Now, this was a meeting which was supposed to be of the staffs of the Inspectors General working on the report; right?

Ms. KERNER. Well, Ms. Kulka was not a member of those staffs. She was the General Counsel for the RTC.

Mr. CHERTOFF. She was invited in; right?

Ms. KERNER. She was invited in by Ms. Black, that's right.

Mr. CHERTOFF. Everybody knew she was there; right? She came openly and she said her piece; right?

Ms. KERNER. Of course.

Mr. CHERTOFF. Now, did you tell everybody you were going to report to Mr. Schmalzbach when you got up and left the room to have a conversation with him on the telephone?

Ms. KERNER. I don't believe I did. I find nothing unusual about the fact that given the redactions that were going to be made—wait, sir. You asked me a question and you're implying that there is something wrong with my communicating——

Mr. CHERTOFF. I have to ask you to answer my question.

Ms. KERNER. I'm answering your question. You asked me whether or not I told people. I said no, but I would also like to put the answer in context. As I've said repeatedly, Mr. Schmalzbach was my method of communicating with the Office of the Secretary, Secretary Bentsen. Through Mr. Schmalzbach, Mr. Knight would be notified, and then he would take it up with the Secretary if it was necessary.

Mr. CHERTOFF. But Ms. Kerner, didn't the letter——

Ms. KERNER. Please, sir, you're not allowing me to finish.

Mr. CHERTOFF. Ms. Kerner, you've tried cases. You know you're supposed to answer the question that's asked. Now, you'll have an opportunity to explain yourself later.

Ms. KERNER. Excuse me. You would like me to keep my answer in a narrow way without any explanation. I am trying——

Mr. CHERTOFF. Please be responsive, Ms. Kerner.

Ms. KERNER. I am trying to the very best of my ability, sir——

The CHAIRMAN. We will let you——

Senator SARBANES. Mr. Chairman, we're not trying a case as in a courtroom. I know Mr. Chertoff is very good at that, but I think the witness ought to be allowed to——

The CHAIRMAN. The witness will be allowed——

Senator SARBANES. —give a contextual answer.

The CHAIRMAN. The witness will be permitted to expand on the answers, and I am going to give Counsel additional time because your answers are very broad. But at the end, you're going to have to answer the question.

Ms. KERNER. Absolutely, Senator. Thank you very much.

The CHAIRMAN. Go ahead.

Ms. KERNER. The Secretary, as you recall, had already given these transcripts to the White House. He himself had received an unredacted set of transcripts. Therefore, at the 11th hour on July 28 when there was going to be a decision to redact the transcripts and the Secretary was prepared to release this whole report that

weekend, it became very important to notify the Secretary's office so he could be prepared to ensure that nothing would stand in the way of the release of the transcripts, that if people had to be told to work overtime or put extra staff on it, that that would be done.

Mr. CHERTOFF. My question was this: Was Mr. Cesca in the room there at the meeting?

Ms. KERNER. Yes, sir.

Mr. CHERTOFF. Was Mr. Cottos in the room?

Ms. KERNER. Yes.

Mr. CHERTOFF. Did you turn to them and say——

Ms. KERNER. I don't know when I made the call, whether it was in the middle of the meeting—but I will concede to you no need—I will concede to you that, in the midst of this, I did not discuss with people the fact that I was getting up to call Mr. Schmalzbach and notifying him of the fact that there were going to be redactions. That, by the way, is not the substance of the inquiry.

Mr. CHERTOFF. It's not?

Ms. KERNER. No, it's not.

Mr. CHERTOFF. So you interpreted the June 27 letter about not reporting to anybody but the Inspector General on matters relating to the investigation, you interpreted that so that it did allow you to report to Mr. Schmalzbach when you thought it was important for the Secretary to know something. Is that what you're telling us?

Ms. KERNER. I had a liaison function that Mr. Cesca was well aware that I was carrying out. I did not, during that period of time, notify him everytime I had a conversation with somebody. Mr. Cesca knew that the Secretary wanted to release the transcripts.

Mr. CHERTOFF. Mr. Cesca, did you know that Ms. Kerner in the meeting left to report to Mr. Schmalzbach about what Ms. Kulka was saying and what she was threatening to tell Congress?

Mr. CESCA. No, I was not aware of that telephone call.

Mr. CHERTOFF. Ms. Kerner, Mr. Cesca is your client. You were Counsel to the Inspector General——

Ms. KERNER. He certainly knew at some point that the Secretary's office was notified that there were going to be redactions. He knew that, sir. I mean, that is the way we were working together because we were making——

Mr. CHERTOFF. You were working together with the Secretary's office?

Ms. KERNER. With Mr. Cesca. We were getting ready for printing the transcripts. I was talking to him about the fact that now there were redactions. We were going to have to get redacted copies of the transcripts to the——

The CHAIRMAN. Weren't you panicked when you heard this was going to go on? Didn't you call up to tell Mr. Schmalzbach about the situation?

Ms. KERNER. Excuse me.

The CHAIRMAN. I mean, here's this important meeting, you got up to make this phone call. Why didn't you wait until the end of the meeting?

Ms. KERNER. The meeting was a very long meeting. In fact, we were there all day——

The CHAIRMAN. It was important you communicate this; right? Get the word back so Mr. Ryan could get hold of someone. Did you

advise him to get hold of Mr. Ryan so that Mr. Ryan could get hold of Ms. Kulka? Didn't you do that?

Ms. KERNER. You know, if you look at the E-mail, Senator, you will see——

The CHAIRMAN. Mr. Schmalzbach's memo says it's pretty critical, and——

Ms. KERNER. Sir, he was——

The CHAIRMAN. Mr. Schmalzbach called Mr. Knight and told them to move on this and contact Mr. Ryan.

Senator SARBANES. Ms. Kerner, let them finish their exclamations. Just hear them out and then we will try to be sure you get a chance to respond.

Ms. KERNER. I'm sorry. It's hard to know.

I will absolutely. Thank you, Senator.

Senator SARBANES. Because they get going and just let them make their exclamations and then we will get your answer.

Ms. KERNER. Thank you, sir, for that word of advice.

Senator are you finished? Is there a question that you would like me to answer?

The CHAIRMAN. The question is, in the middle of the meeting, you find it absolutely imperative to get back to Treasury to warn them of the potential action that the IG's Office might take.

I'm suggesting that was not your role. I'm suggesting that the paper trail evidences clearly that everyone starts to respond, that Mr. Ryan contacts Ms. Kulka and the purpose is to make sure that you maintain control.

Ms. KERNER. Sir, if you take a look at the E-mail—I'm a person who's devoted my life to finding the facts. If you take a look at the E-mail, what the E-mail is saying is if there are going to be any redactions, we have to make sure they are done quickly so that nothing interferes with releasing the report.

That was the problem that was being addressed in that E-mail. There's nothing nefarious about that, wanting to ensure that if there are going to be redactions that it's done in a prompt manner so the report can be released.

Mr. CHERTOFF. Did Ms. Kulka say she wasn't going to be prompted or was the concern that she was going to say something to Congress about the investigation? Wasn't the information you conveyed to Mr. Schmalzbach that she was prepared to testify that the IG's group had been under the sway of the Secretary? Isn't that what panicked you? She might come to Congress the next week and say hey, we've been under the sway of the Secretary. Isn't that the information you communicated?

Ms. KERNER. As Mr. Schmalzbach's memo says, there was no basis for making that assertion.

Mr. CHERTOFF. Is that the threat or the fear that you communicated to Mr. Schmalzbach? He didn't——

Ms. KERNER. Excuse me. Are you asking me a question?

Mr. CHERTOFF. Is that what you communicated?

Ms. KERNER. I considered that threat to be wholly unfounded and inappropriate on Ms. Kulka's part. I never heard her make that threat. She never made that threat to me; that was related to me by Pat Black. At the meeting—I want to finish this statement. At the meeting, Ms. Kulka never made any such threat, but this

is an E-mail that was begun before the meeting and that's what I had been told by Pat Black would happen.

Mr. CHERTOFF. That's what concerned you, that fear that Ms. Kulka would come to Congress and that's why you called?

Ms. KERNER. No, I called Mr. Schmalzbach to tell him that there had been an agreement that redactions were going to be made and that the redactions were going to be made in a prompt manner. He agreed to put staff on it and they worked there until late at night. That's what I called to tell him, that the matter had been resolved in that way.

Mr. CHERTOFF. Wait a second. I ask the Chairman's indulgence because the answer has changed. You told us a couple of minutes ago that there was some urgent reason you had to leave the meeting. You had to leave in the middle of the meeting to give notice to the Secretary.

Ms. KERNER. There was no need for Mr. Ryan to be called because there was going to be a prompt resolution of the problem.

Mr. CHERTOFF. So you had a second call to Mr. Schmalzbach?

Ms. KERNER. No.

Mr. CHERTOFF. We have to get this right. You're in the meeting; right?

Ms. KERNER. I don't think the E-mail was generated as a result of my call to him.

Mr. CHERTOFF. You made a call—I have the phone records. It's a 10:29 a.m. call. The E-mail is generated at 10:44 a.m. Are you going to dispute this, that the E-mail was generated by a call 15 minutes earlier?

Ms. KERNER. I never saw the E-mail——

Mr. CHERTOFF. It's in front of you.

Ms. KERNER. I haven't seen the E-mail, Senator, I'm sorry.

Mr. CHERTOFF. I'm not a Senator, but please——

Ms. KERNER. I was responding to Senator D'Amato's hand motions.

Mr. CHERTOFF. It's right in front of you.

The CHAIRMAN. My incredulous look.

Ms. KERNER. I suppose so, Senator.

Mr. CHERTOFF. It's right in front of you, Ms. Kerner, it's 11124, and it just says, in the very beginning, it says "Ed, the next call this morning should be deferred until after 11:30 and it should be to Ryan," that's Kulka's boss at RTC, "and not to Adair. I just heard from IG Counsel Francine Kerner," and we have a call at 10:29 a.m. for 6 minutes which precedes this 10:44 call.

Ms. KERNER. I still think that that was—it may well have been a second call, sir, because the fact is that there was—I don't know when Ms. Kulka arrived at the RTC OIG's Offices, but going into the meeting with Ms. Kulka, I knew that we would oppose redactions. I knew that we might agree to the redactions.

After the redactions were agreed to and she decided that she would put staff on making the redactions, that's exactly what was done. I don't believe that there was any call made because the matter was resolved.

Mr. CHERTOFF. But that's not the question. The question is did you make an emergency call in the middle of the meeting because

Ms. Black indicated that Ms. Kulka was prepared to go to Congress over this; yes or no?

Ms. KERNER. I don't recall making the call for that reason. I recall making the call to let them know, as the E-mail says, that there might be some holdup on getting the report out.

Mr. CHERTOFF. Now, let me ask you this about the redactions. Isn't it a fact that the redactions that were made included discussions by Ms. Kulka of her legal theories about how to proceed with respect to this investigation?

Ms. KERNER. Her legal theories on how to proceed?

Mr. CHERTOFF. Yes, her discussions about certain legal considerations that would come up, certain tactical considerations. I have them right here. I'm not going to disclose them publicly. Isn't it——

Ms. KERNER. There was nothing in there. Congressman Leach on August 4 talked about the position of the Professional Liability Section.

Mr. CHERTOFF. We're on July 28 here. Don't give me August 4.

Ms. KERNER. I am trying to explain to you that, in my opinion, there was no confidential information that needed to be redacted that wasn't in the public domain.

Mr. CHERTOFF. Mr. Cesca, was that your understanding? There was nothing in here that was confidential?

Mr. CESCA. I think there is a technicality that I learned at that meeting that I was not aware of previously, and that is, although the information was in the public domain, information that was considered as confidential had never been acknowledged by any employee of the Resolution Trust Corporation, and it was for that reason that they suggested that information be redacted.

Mr. CHERTOFF. When you say it was in the public domain, you mean there were news stories reporting rumors and gossip?

Mr. CESCA. That's correct.

Mr. CHERTOFF. Wasn't the material redacted material that specifically discussed the nature of the alleged violations, that talked about some of the considerations about whether there could be additional charges because of legal issues? I'm not going to read it publicly, but I mean, are you prepared to deny here that there was discussion of legal theories and the specifics of these referrals in this redacted material?

Ms. KERNER. Sir, this was—there were going to be Congressional hearings, and the material should have been made public. I know of no material in here that warranted redaction. That was my position then. I have not changed my position one bit.

Mr. CHERTOFF. Let me leave you with one last question. Did you know when we had our hearings last year, even during the hearings themselves in the beginning of August, the then-Chairman made a specific point of saying to Ms. Kulka he did not want to have any testimony concerning the substance of the referrals because they were still confidential? Did you know that?

Ms. KERNER. I certainly take your word for it.

Mr. CHERTOFF. Nothing further, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you, Mr. Chairman.

Ms. Kerner, when did you come to work for the Department of the Treasury?

Ms. KERNER. In September 1992, sir.

Senator SARBANES. Before that, where had you been?

Ms. KERNER. I was a Senior Attorney for Ethics at the Office of the General Counsel at the Department of Commerce.

Senator SARBANES. How long had you been there?

Ms. KERNER. I was there from 1989 to 1992.

Senator SARBANES. When you came to Treasury, you came into the Office of the General Counsel; correct?

Ms. KERNER. That's correct.

Senator SARBANES. Were you the Counsel to the Inspector General within the Office of the General Counsel?

Ms. KERNER. Yes, I was. My exclusive duties were to the Inspector General. My office was around the corner from the Inspector General's Office. I took my assignments from the Inspector General and the staff on a daily basis.

Senator SARBANES. Your responsibility was really to give counsel to the Inspector General?

Ms. KERNER. Absolutely.

Senator SARBANES. Was that the extent of your responsibility?

Ms. KERNER. Absolutely.

Senator SARBANES. Mr. Cesca, if you hadn't worked out this provision of legal advice and services to the OIG which this memorandum that you prepared respecting how Ms. Kerner would function, you would have been without counsel, would you not?

Mr. CESCA. That's correct.

Senator SARBANES. What would you have done? You would have been in a difficult situation at that point?

Mr. CESCA. I would agree with that.

Senator SARBANES. So you developed this effort to provide a clear separation, since the General Counsel was one of the people whose conduct was being examined, in order to insulate Ms. Kerner from the General Counsel; is that correct?

Mr. CESCA. That's correct.

Senator SARBANES. But that would then enable you to continue to have the legal advice which you had been receiving from Ms. Kerner as, in effect, the lawyer to the Inspector General; is that correct?

Mr. CESCA. That's correct, Senator.

Senator SARBANES. Now, you also tried to provide some insulation on the rating question; correct?

Mr. CESCA. That's correct.

Senator SARBANES. You did not think that was adequate, Mr. Cottos; is that correct?

Mr. COTTOS. No, I did not.

Senator SARBANES. What would you have done for a lawyer?

Mr. COTTOS. I think we had Pat Black available from the RTC who was not in any reporting chain at the Treasury. We also had all the attorneys from the Office of Government Ethics available to us. So I felt like we would have enough legal representation from those two places.

Senator SARBANES. So you would have used the RTC's lawyer?
Mr. COTTOS. That's correct.
Senator SARBANES. Not a Treasury lawyer?
Mr. COTTOS. That's correct.
Senator SARBANES. Not the lawyer who had serviced the Inspector General's Office—the Treasury's Office?
Mr. COTTOS. Not under the circumstances.
Senator SARBANES. Had you been satisfied with the counsel that Ms. Kerner had provided to the IG's Office prior to this occurrence?
Mr. COTTOS. We had had some disagreements in the past.
Senator SARBANES. You and Ms. Kerner had had disagreements?
Mr. COTTOS. Yes, we had.
Senator SARBANES. Of a serious nature?
Mr. COTTOS. Define "serious," Senator. We had had some disagreements about things.
Senator SARBANES. You had crossed swords with one another?
Mr. COTTOS. Yes, we had.
Senator SARBANES. Now, Ms. Kerner, if you would take this E-mail from Schmalzbach to Knight that Mr. Chertoff was pursuing just before we concluded his round, you have that there?
Ms. KERNER. I'm looking for it, sir.
Senator SARBANES. It is No. 11124.
Ms. KERNER. I have it, sir.
Senator SARBANES. I would like to work through it for a minute because it was quoted in a way, in terms of the questioning being put to you, that it seems to me gave less than a full picture. As I understand it, you said you were prompted to call him because of the question of either the release of the transcripts or the redactions of the transcripts; is that correct?
Ms. KERNER. That's right, sir.
Senator SARBANES. Now, the first paragraph of this E-mail says:

I just heard from IG Counsel Francine Kerner, who is meeting with RTC IG people to determine final changes to the IG's chronology. At 11:30, that group will meet with Ellen Kulka who is expected to argue that the transcripts of the IG's interviews should not be released at all with the IG's report. If she fails in that argument (as the IG's are determined that she will), she must be asked to review the transcript for any nonpublic information because her shop has the technical knowledge of the Madison investigation necessary to do so. There is concern that she may drag her feet on completing the task.

Now, as I understand it, that's what you just testified to in response to questioning, that was your concern; is that correct?
Ms. KERNER. That's right, sir.
Senator SARBANES. Mr. Cesca, it was the view of the IG's that the transcripts of the interviews should be released, was it not?
Mr. CESCA. That's correct.
Senator SARBANES. Further on in this E-mail, Mr. Schmalzbach says:

You also need to be aware of a piece of background. Counsel to RTC's IG, Pat Black, is telling this morning's gathering of the IG people working on the report that if Kulka fails to win on the issue of not making the transcripts public, she is prepared to testify at the hearings that the IG's group has been under the sway of the Secretary in performing their investigation. Kulka has no facts to support that perspective and I don't believe there's any basis for that perspective.

Mr. Cesca, if Ms. Kulka, failing to win on the issue of making the transcripts public, that she wanted them not to be made public,

she does not prevail on that issue and she then asserts that the investigation was under the sway of the Treasury, of the Secretary of the Treasury, what would your reaction have been to that assertion?

Mr. CESCA. Well, first of all, I would have disagreed with the assertion that the investigation was under the sway of the Secretary. Second, I think we would have had to decide whether or not we could go ahead and release the report exclusive of the transcripts.

Senator SARBANES. In your view, Ms. Kulka would have been asserting something that was contrary to the facts, would she not? If she had done this—I don't know if she did, but if she had done this, she would have used a very heavy weapon in terms of trying to prevent the release of the transcripts, would she not?

Mr. CESCA. That's correct.

Senator SARBANES. In fact, in her deposition, just to make the point that no harm flowed out of any of this, Ms. Kulka was asked:

In your opinion, did the release of unredacted transcripts of the IG deposition to the White House have any significant practical effect on any of the RTC's ongoing investigations in the Madison case?

And her answer was:

I know of no significant effect of that release.

Now, let me ask you this question. Since Ms. Kulka apparently cast a cloud over your investigation, do you think your investigation was a full, complete, accurate, and professional investigation?

Mr. CESCA. Yes, I do.

Senator SARBANES. Was it compromised in any way?

Mr. CESCA. No, it was not.

Senator SARBANES. Do you agree with that, Mr. Cottos?

Mr. COTTOS. Yes, I do.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Good morning, panel.

Ms. Kerner, to clear the air and in fairness to you in connection with any assertion there may be that you had some political agenda or bias here, could you explain to us what you did during the Reagan and Bush Administrations from a professional standpoint as a career civil servant?

Ms. KERNER. Well, during the Reagan Administration, I was Counsel to the Inspector General at the Department of Commerce. I served for Sherman Funk. During the period of time that I worked for Mr. Funk, who was a Reagan appointee, he promoted me into the Senior Executive Service. Later I took a voluntary downgrade to a 15 after I had the birth of a child because I wanted to work part-time. But that was my position with Mr. Funk who later went on to be appointed by President Reagan to be the Inspector General at the Department of State.

I also worked for Frank DeGeorge who was the Inspector General at Commerce during those Administrations. And I worked for Wendell Willkie, III, who was a Presidential appointee during those Administrations.

I was hired by Bush appointees to work at Treasury.

Mr. BEN-VENISTE. Now, Senator Sarbanes brought out from Mr. Cottos that your prior professional relationship was perhaps a rocky one. Mr. Cottos, you are not an attorney; correct?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. You are a trained criminal investigator?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. Ms. Kerner, you are an attorney, a former assistant district attorney, criminal prosecutor, and career attorney; who, as you have described yourself, has had a career investigating facts as an attorney?

Ms. KERNER. That's correct.

Mr. BEN-VENISTE. In my experience of 25-plus years, sometimes the criminal investigators see it differently than the lawyers who have criminal investigatory responsibilities. Is that a fair statement?

Ms. KERNER. That's certainly a fair statement, sir.

Mr. BEN-VENISTE. I take it that you and Mr. Cottos, as of the time that these transactions took place, had had a number of disagreements so that, from a personal standpoint, you did not work and play well with each other? Would that be fair to say? Some of this was—some of this conflict was of a personal nature?

Ms. KERNER. I don't think that we ever gave up trying, but it was a rocky road, yes.

Mr. BEN-VENISTE. There was a history there, I think you would both agree.

Mr. COTTOS. I think that we were both professionals and tried to do our job the best way we could.

Mr. BEN-VENISTE. Now, a very important distinction, I think, was pointed out by you, Ms. Kerner, this morning in connection with the nature of the investigation that was going on in conjunction with Secretary Bentsen's request to OGE to provide him with a report, which you indicated to me was that the responsibilities delegated down from that to Treasury IG and RTC IG were those to provide information for a management review; is that correct?

Ms. KERNER. That's correct.

Mr. BEN-VENISTE. You made the distinction that this was different than a criminal investigation.

Ms. KERNER. That's correct.

Mr. BEN-VENISTE. In that regard, I take it you would agree, Mr. Cottos, that under these circumstances, a criminal investigation had already been undertaken by the Independent Counsel's Office, and the Independent Counsel's Office had issued a declination?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. That was your understanding, Ms. Kerner?

Ms. KERNER. Absolutely.

Mr. BEN-VENISTE. Under those circumstances, you understood that the criminal side of this was, for all intents and purposes, over because there had been a review, a Grand Jury investigation, witnesses—the same witnesses by and large had already given testimony before a Grand Jury, and they had indicated no criminal problem here.

Mr. COTTOS. Yes, sir, that's correct.

Mr. BEN-VENISTE. Now, from a management review standpoint, putting aside your training, Mr. Cottos, in connection with conduct-

ing criminal investigations, you would concede, would you not, that there is a distinction between a criminal investigation and a management review?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. Ms. Kerner, what did that distinction mean from your point of view?

Ms. KERNER. For one thing, it meant that the results of the inquiry were going to be made public; in this particular case, that the depositions were going to be made public, that the matter was going to get a full public disclosure.

It also meant that managers, in this case the Secretary who had requested the report, could be kept up to date about the status of the investigation in a way that you would not ordinarily do in a criminal case.

Mr. BEN-VENISTE. Now, let me turn again to you, Mr. Cottos. On the big ticket item, which I think sometimes gets lost in the sauce here, where we have an investigation, then an investigation of the investigators and so on, down the line, so as where the next hearings might be held at the Palace of Versailles in the hall of mirrors.

In your investigation, is it not the case, sir, that you found that you had the opportunity to fully investigate and you were proud of the results of your investigation as having been conducted in a professional manner?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. Is it the case, sir, that you are able, even a year later now, to identify any bad thing that happened, anybody, in the Chairman's words, tailoring his or her testimony as the result of anything that has been discussed over the last 2 days here?

Mr. COTTOS. Not to my knowledge.

Mr. BEN-VENISTE. You were aware because I take it you, along with others—I think we had a witness yesterday who responded to Senator Sarbanes question that he was on vacation somewhere in Texas and he was watching the hearings during his vacation—I take it you were interested in the public hearings that resulted?

Mr. COTTOS. Yes, I was.

Mr. BEN-VENISTE. So you watched them carefully. In your view, even a year later, with all the benefit of hindsight is that you could not tell that anybody did something bad, that they tailored, skewed or, much worse, obstructed the inquiry?

Mr. COTTOS. I would have no way of knowing that.

Mr. BEN-VENISTE. You could watch the testimony, having taken testimony and reviewed very carefully the record, would be able to get a clue as a trained investigator——

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. —whether such impropriety occurred?

Mr. COTTOS. I don't think I could make the statement, because I don't know what a witness would have testified to had they not seen the transcripts. So, I don't know if anyone changed what they would have said or not, and that was the concern.

Mr. BEN-VENISTE. But with the benefit of hindsight, and we have had the panel yesterday of RTC IG's, and now we are asking you whether there was anything that appeared to you to flow from the information that we have talked about here over the past 2 days

that was of an untoward nature and somehow skewed your ability to conduct a full and complete investigation?

Mr. COTTOS. No, sir.

Mr. BEN-VENISTE. Now, I would like to get to this question of redacting, because it keeps popping up, and everytime we have someone explain it, my friend Mr. Chertoff or someone brings it up again in terms of whether this was an important issue.

Mr. Cesca, you say that somewhere toward the tail end of everything that was happening in July, late July 1994, you recognized that there might be a technical reason to redact these transcripts because nobody from the RTC officially had confirmed what had appeared widely in the press?

Mr. CESCA. That was my understanding.

Mr. BEN-VENISTE. So that in terms of the information that was redacted, and I would like to make, with the Chairman's permission, a package of press stories, that antedated the July 23, available to you, and I guess to anybody who wants to see them. I would only—I am not going to go through all of it, but I would draw your attention—do we have it?

It starts with the article, "Arkansas probe sensitive from start."

The CHAIRMAN. OK.

Mr. BEN-VENISTE. I just draw your attention to the first article which is a Washington Post story of January 5, 1994—this is 6 months before your investigation—and note that, down in the first column:

> The RTC finally did ask Federal prosecutors in Little Rock, AR, last fall to investigate 9 suspected criminal matters arising out of Madison's 1989 failure, naming the Clintons, along with other Arkansas politicians who had dealings with McDougal.

And over into the last column on the right:

> By September, having gathered much more information and still having received no official decision on the first referral, the RTC drafted a new request for the Justice Department. This expanded referral recommended investigation of 9 separate matters of possible criminal behavior, adding details to new transactions and conflicts of interest and naming a number of new players, sources said.

Now, this is in January 1994; this is old news, by July, in terms of what is in the public domain. I understand that no one from the RTC officially corroborated this information, but we have a number of different stories that talk about the RTC criminal referrals and, indeed, we have a story in this packet—and I won't take the Committee's time to read it here—that refers to not only that but the fact that Representative Leach had been presented with all of these documents relating to the original criminal referral and the 9 additional criminal referrals that came out in 1993.

So when you went back and this issue, which Senator Sarbanes has now I think with the quotation from Ms. Kulka's testimony, put to rest because Ms. Kulka, the one who raised the issue and was so strong about the issue of redactions, has testified that the unredacted transcripts, having been released and being made public, would have had no serious effect on her investigation.

But going beyond that, what you went back and did was redact things like—and I am looking from one transcript here—every mention of the fact that there were 9 criminal referrals. This was considered sensitive information.

But you knew that it had been in the newspaper for months and months and months that there were 9 referrals; correct?

Mr. CESCA. That's correct.

Senator SARBANES. Actually, not only in the newspapers, but my recollection is that Chairman Leach, who was not then Chairman, that Congressman Leach made a major floor statement in the House of Representatives which extended for many pages through the record and then inserted a raft of documents on March 25, 1994, at least 3 months before all of the work that we are talking about here was taking place.

In that statement and in those documents, some of the material that Kulka apparently thought ought to be redacted was laid out in the public record. It was actually in the Congressional Record. Were you familiar with that, Mr. Cesca? Do you recall that?

Mr. CESCA. Well, I do recall that it was in the—I do not recall that it was in the public record. I recall that it was in the press, all right, and I might add that we went through a very deliberate process that very same day where Ms. Kulka had two of her staffers going through the records of transcript and identifying those portions of the transcript that she suggested or they suggested should be redacted.

Mr. BEN-VENISTE. Let me continue on. Suppose, for example, because Ms. Kulka got upset about the fact that there was a mention of 9 criminal referrals and various other descriptive things about the referrals. What do you think her reaction would have been if the actual criminal referrals had been appended, the actual referrals themselves, if she was livid or horrified, as we heard yesterday? What would her reaction have been to the actual release of the criminal referrals themselves, the documents?

Mr. CESCA. Well, I would imagine that she would have reacted likewise. She would have been very livid.

Mr. BEN-VENISTE. Likewise, or even more ballistic?

Mr. CESCA. That's right.

Mr. BEN-VENISTE. Do you know who actually caused those criminal referrals to come into the public record and the documents that Senator Sarbanes has referred to coming into the public record?

Mr. CESCA. No, I do not.

Mr. BEN-VENISTE. You don't have a clue?

Mr. CESCA. No.

Mr. BEN-VENISTE. No one has told you who gave those records to Representative Leach which found their way into the public record?

Mr. CESCA. Nobody has told me.

Mr. BEN-VENISTE. Has anyone told you, Ms. Kerner?

Ms. KERNER. I believe it was Jean Lewis.

Mr. BEN-VENISTE. That's right. So, rather than pursuing Jean Lewis for providing all of this information, I mean if we are looking at—if we are not in Alice in Wonderland here, we are talking about, on the one hand, everybody getting all exercised about redacting a line in a transcript that says——

The CHAIRMAN. I must say for the benefit of Counsel, the Senator is not upset about nonredacted material. But I am certainly upset and I think it is totally inexcusable that the transcripts were sent to the Secretary's office and that these communications occurred.

When I see that as a result of the conversation that Francine Kerner had with Mr. Schmalzbach, 6 minutes after they get off the telephone, he writes this very descriptive memo, I have to tell you that Mr. Cottos was absolutely correct.

There is no way that you could have an impartial investigation. You have people being told what other people are testifying to. I also find it difficult to understand that she can't remember sending these transcripts over which were so important, but a week later, she goes back and prepares this memo making it look like sending the transcripts was a contemporaneous decision, when his notes clearly indicate that the transcripts were returned on July 13, and you couldn't remember that. I would like to know how many transcripts were involved. When I get to my questions, I will raise that. It has nothing to do with this matter of what was or was not redacted.

Counsel knows that was an issue on technical grounds and notwithstanding that this information appeared but was never confirmed officially by the Department, by RTC. Lots of things are in the paper and whether you confirm them or not, that adds the stamp that yes, a particular action has been taken.

I yield back and I ask to put the additional time that I spoke on the clock for Counsel.

Senator SARBANES. Mr. Chairman, I just want to make the observation that not only did you have these press stories but you had Congressman Leach taking the floor of the House of Representatives and making a very extensive statement and releasing a whole plethora of documents into the public——

The CHAIRMAN. It does not excuse Ms. Kerner's actions in terms of ensuring that this investigation was undertaken without the testimony of witnesses being made available to the very people who were going to be called before this Committee and others under investigation, absolutely inexcusable.

Ms. KERNER. Senator, you have said that several times——

The CHAIRMAN. I have said it over and over and I will continue to say it. Notwithstanding your excuses for such conduct, when you leave in the middle of a meeting at 10:29—and I'll tell you, if we didn't have the documents, you would probably say you didn't even remember the phone call. You call over there, and then we see a memo written in response. The memo shows that you called that for immediate attention because you said you better get on top of this thing, you better get hold of Mr. Ryan, don't get hold of Mr. Adair, get hold of Mr. Ryan, because he is the one who has the key to Ms. Kulka. We have just learned in this meeting she is going to come here at 11:30 and you want to keep her under control.

How is this related to redacted materials? It was about preventing someone from saying, I don't like the way this investigation is being conducted. That is my interpretation. Let the facts speak for themselves.

You don't remember sending transcripts earlier than July 18? That is pretty hard to believe. I guess his diary didn't tell the truth. He lied to his diary. I have heard that too, you know.

Ms. KERNER. So have I, sir.

Senator SARBANES. Ms. Kerner, let me reclaim my time. Given the Chairman's assertions here, let me take you back through this

E-mail, because what is happening here is we are getting a constant assertion of something and no facts to support it.

Now, I'm very concerned by Ms. Kulka's behavior on the basis of this E-mail.

Ms. KERNER. So was I, sir.

Senator SARBANES. If you got a report, as apparently you did, from Pat Black that Ms. Kulka, if she didn't win on the issue of not releasing the transcripts, was going to assert that the IG's group had been under the sway of the Secretary in performing their investigation, that was an outrageous assertion.

Ms. KERNER. I agree, sir.

Senator SARBANES. Would you agree with that, Mr. Cesca?

Mr. CESCA. Yes, I would.

Senator SARBANES. Mr. Cottos.

Mr. COTTOS. I wasn't present in the meeting with Ms. Kulka. Mr. Blight and I were asked to leave the room.

Senator SARBANES. What do you think of such an assertion?

Mr. COTTOS. I don't think it is correct or proper.

Senator SARBANES. That's right. That was a real stretch on her part to say if you don't accede to my position that the transcripts ought not to be released, I am going to assert that this investigation was faulty.

Ms. KERNER. No, the irony of this for me is that I was arguing strenuously that the results of our investigation should be made public. I was doing everything I could to ensure that the report would become public in its entirety, and now I'm being criticized for that fact. Frankly, I don't understand it.

Senator SARBANES. Let me ask you, as you understood what was going to happen, Ms. Kulka was coming into that meeting to say don't release the transcripts or alternatively they must be redacted.

Ms. KERNER. That's correct.

Senator SARBANES. It was your concern that she may drag her feet on completing the task at a time when, I take it, you all were moving toward concluding the report, releasing the report and releasing the transcripts with the report; is that correct?

Mr. COTTOS. That's correct.

Mr. CESCA. That's correct.

Mr. BEN-VENISTE. When I was asking about the issue of redactions, and I did not mean to say, Mr. Chairman, that you had brought the issue up, but Mr. Chertoff had held up a folder and said, "I have a folder here and I am not going to get into all of these things that are in these redactions," but he held up the folder as though this were an important issue, and I'm sorry, Mr. Chairman, we have to take these issues one at a time.

The issue I was addressing at this point was whether the redactions are a real issue that concern this Committee or whether it is nothing, or whether it is a mirage, a detour, a frolic, to the real issue of whether something bad happened.

I am asking whether——

The CHAIRMAN. I think you have hit the nail on the head, Counsel.

Mr. BEN-VENISTE. May I finish, Mr. Chairman?

The CHAIRMAN. Yes, I will tell you, you are well over the time. You can finish.

Mr. BEN-VENISTE. You promised me you would give me the time back.

The CHAIRMAN. I have. Go ahead.

Mr. BEN-VENISTE. My point to the three of you is, given what we have demonstrated to you in terms of what was in the public record, you may not have known that the criminal investigator for RTC took all the materials in her criminal file, the referrals and the backup material, and provided them to someone who was going to put them into the public record but we know that now.

But the result of that, the spillover from that that came out in the press reports, beginning 6 months before your inquiry, made it clear that the insignificant references to that material that wound up being redacted were redacted for technical purposes, if I understand Mr. Cesca, not because it was sensitive information that had not yet been seen in the public domain but rather because no one had taken responsibility at the RTC for leaking it. Nobody had officially provided the stamp of approval for putting that official RTC material in the public record. Is that a fair statement?

Mr. CESCA. I would say so.

The CHAIRMAN. Let me ask you, Mr. Cesca, do you see the memo from Mr. Schmalzbach to Mr. Knight? I want to call to your attention and to Counsel's attention the first 3 sentences.

Mr. CESCA. The first 3 sentences of the second paragraph?

The CHAIRMAN. Yes, "I just heard." You want to read that out loud?

I just heard from IG Counsel Francine Kerner, who is meeting with RTC IG people to determine final changes in the IG's chronology. At 11:30, that group will meet with Ellen Kulka who is expected to argue that the transcripts of the IG's interviews should not be released at all with the IG's report.

So this is more than just a matter of whether there should be deletions, but she argues that the transcripts of the witnesses should not be released; is that correct?

Mr. CESCA. That's correct.

The CHAIRMAN. That's what her main concern was; was that correct?

Mr. CESCA. I think her main concern was the confidential information or the privileged information that was contained within those transcripts.

The CHAIRMAN. She said the transcripts should not be released. So I understand——

Senator SARBANES. The next sentence covers the very point Mr. Cesca just made. Why don't we do the next sentence as well?

The CHAIRMAN. Let me say that what we have had here is an attempt to obfuscate. I say obfuscate, because we would be led to believe that all Ms. Kerner was doing was speaking about public information.

The public didn't have the transcripts. They were not supposed to be exchanged but that were made available to Treasury people. You are a skilled lawyer, Ms. Kerner. I would suggest that's why it was on the 17th that you went into great detail to prepare a memo as if there had never been any transcript sent over. How many transcripts did you send originally?

Ms. KERNER. I don't have any recollection of the events, sir——

The CHAIRMAN. You don't have any recollection even after we showed you the note in which your colleague, Mr. Schmalzbach, says "transcripts returned"? That was on July 13. Do you recall when you first sent him transcripts?

Ms. KERNER. As I have said, I don't recall, sir.

The CHAIRMAN. How about Jean Hanson's transcript, isn't it a fact that that's one of the transcripts in question?

Ms. KERNER. I have no idea.

The CHAIRMAN. If it was Jean Hanson's transcript, would that be appropriate? The subject matter—the person who was one of the subjects of the inquiry, would that be appropriate to send over to the Treasury—to the Secretary's office by General Counsel?

Ms. KERNER. Sir, it was my understanding that you yourself have said that the transcripts going to Cutler were not a problem if he used them in accordance with the restriction that Secretary Bentsen——

The CHAIRMAN. I never said that. Believe me, I didn't say that. That wasn't——

Ms. KERNER. That it was a closed question, sir, I think is what I recall your having said at testimony last year.

But in any event, regardless of that point, the fact of the matter is that Secretary Bentsen, even Mr. Adair said yesterday that Secretary Bentsen, it was appropriate to give him a copy of the draft report and appropriate to give him copies of the transcripts.

Mr. Schmalzbach was operating on behalf of the Secretary. The Secretary was not going to sit there and read hundreds and hundreds of pages of transcripts. So when he got these transcripts, he got them in order to report to Ed Knight, Edward Knight, and to apprise the Secretary of what was in the transcripts.

The CHAIRMAN. Thank you, Ms. Kerner.

Senator Mack.

OPENING COMMENTS OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman.

Ms. Kerner, I would like to review another area having to do with, I think one of your responsibilities was preparing questions for the IG of people who would be interviewed?

Ms. KERNER. Yes, sir.

Senator MACK. The particular area that I have a concern about and an interest in is Josh Steiner.

Ms. KERNER. Yes, sir.

Senator MACK. If I remember correctly, July 11, 1994, there was preparation of questions on your part sent over to, I believe, Mr.——

Ms. KERNER. Cottos, yes, sir.

Senator MACK. —Cottos at 10:44, there was an E-mail. Are you familiar with that?

Ms. KERNER. That's correct, sir, yes. There was an E-mail that I did to Mr. Cottos transmitting questions that I had prepared for Josh Steiner.

Senator MACK. It is my understanding, and I draw this conclusion, that 15 minutes later—now, this was 10:44 p.m. that you sent these questions over?

Ms. KERNER. I don't recall, sir, whether it was a.m. or p.m.

Senator MACK. Do we have that?

I'm reading from a deposition. This is on page 128.

Senator SARBANES. Which deposition is this?

Senator MACK. This is the deposition of Francine Kerner, which refers to an E-mail on July 11, 1994, which has the time on it of 10:44 p.m.

Ms. KERNER. Sir, I know the E-mail was produced for the Committee. I just don't remember whether it was a.m. or p.m. I think the best—I can't see it.

Senator MACK. We are going to bring it down to you.

Ms. KERNER. It is p.m.

Senator MACK. This is 10:44 at night, and apparently 15 minutes later—and again, I am making this conclusion, drawing this conclusion from notes, from Mr. Schmalzbach's notes that indicates there is a 10:30 a.m. meeting that he is going to have with Josh, and it has in parentheses, "Weingarten met with Francine Kerner 11 p.m. Monday." It appears that 15 minutes later that you met with Josh Steiner's attorney.

Ms. KERNER. My recollection is that I met with him twice. I don't recall what the times were, but I met with him twice. The first time he gave me a copy of Mr. Steiner's diary. The second time he came by to try to convince me that asking questions about the diary was not relevant.

Senator MACK. I must say to you, I'm not an attorney, so I feel a little bit out of my league here. Is that usual, that kind of relationship?

Ms. KERNER. Well, it is certainly not a relationship. I never knew the man before he——

Senator MACK. I didn't mean it in that sense.

Ms. KERNER. I just want to make that clear that I had no sort of relationship with him in any sense other than to meet him——

Senator MACK. Is it usual—maybe I need to be a little bit more clear. Is it usual to have these kinds of discussions with attorneys for someone who is going to be interviewed the following day?

Ms. KERNER. My function was liaison.

Senator MACK. Liaison with whom?

Ms. KERNER. With everybody.

Senator MACK. That's the way it seems, yes.

The CHAIRMAN. That's the problem. You just said it. That's the problem. You are liaison with everybody. You are supposed to be part of this investigatory team——

Ms. KERNER. Somebody has to do that work, sir. The fact that I——

The CHAIRMAN. —not counsel to the people doing the investigation.

Ms. KERNER. That was my responsibility, sir. The fact is that because I had that function does not mean that I was involved in a conspiracy of any sort, as sometimes seems to be the implication here.

In any event, Mr. Weingarten, as you know, Mr. Steiner's diary was an issue of some sensitivity with him. He testified about that before the Congressional Committees for a very long time.

Senator MACK. I remember it well.

Ms. KERNER. I remember it too. Mr. Weingarten was making a pitch that the diary was irrelevant and that the diary was incorrect and so on and so forth. I listened politely, but as the E-mail says, the E-mail that I wrote to Mr. Cottos, I had prepared questions about the diary and that was for the investigators to decide whether or not they would do that, whether or not they would ask the questions.

I want to point out one other thing to you, sir. There is another E-mail on the morning of July 12, showing that I sent an E-mail to Mr. Cottos at about 2:39 in the morning. I did not leave—I came to work on the 11th. I don't remember when I got to the office, but I did not leave the office until about 3 a.m. the next day, because right after that process of finishing up with the Josh Steiner questions, I turned my attention to questions for Altman and Hanson.

Senator MACK. Mr. Cottos, were you aware that Ms. Kerner had these two meetings with Josh Steiner's attorney?

Mr. COTTOS. Yes, I was.

Senator MACK. You were aware of the one that took place 15 minutes after she had E-mailed you the——

Mr. COTTOS. No, I was not. I knew that there had been a meeting at some point, but certainly not after the questions had been sent to us.

Senator MACK. Did that concern you?

Mr. COTTOS. Yes.

Senator MACK. Again, not being an attorney, is this this classic difference between a lawyer trained, well prepared, excellent background, great resume, and someone who is an investigator, did that bother you that this was going on?

Mr. COTTOS. The problem, Senator, was in the communication of the questions. The investigators basically prepared the night before for the interviews that they were going to do the next day. Ms. Kerner sent her questions to me. I usually received them on the morning that the interviews were going to take place. So all I could do was hand them to the investigators. Normally they didn't have enough time to really assimilate those questions with the questions that they had prepared.

The other problem with the meeting with the attorneys was again of communication, because we had several interviews where the investigators would ask a question and the attorneys for the witness would say that question is off limits. I have discussed this with Ms. Kerner and she has agreed that you will not get into those areas. The investigators were very concerned. They relayed that to me. I relayed that to Mr. Cesca. I was concerned that if there were any deals being made or certain areas being off limits that I needed to be included in those discussions because my investigators needed to know. That was my concern.

Senator MACK. Did that only happen in this one particular case?

Mr. COTTOS. No, sir. That happened probably three or four different times.

Senator MACK. Do you remember who the individuals were——

Mr. COTTOS. No, sir, I don't.

Senator MACK. What is your reaction to this recent comment that again Mr. Cottos spoke with you about his concerns that there

were these discussions between Ms. Kerner and those who were being interviewed?

Mr. CESCA. I was aware of the discussions but I wasn't aware of the timing of the discussions. It would seem to me——

Senator MACK. When did you become aware of the timing? When did you become aware of this timing issue?

Mr. CESCA. Just—the issue with respect to the timing, that has been surfaced right now.

Senator MACK. How do you react to that?

Mr. CESCA. Well, it seems to me that there is a perception that if questions are recommended for the investigators to ask and then there is a communication with the attorney for the witness, then there is a perception that there could be a compromise.

Senator MACK. Let me ask you this, if I can be permitted to continue on just a little bit. The word "perception" is I think an important one because all of this, at least from my point of view, relates back to the report that the Office of Government Ethics was going to make, and those of us who have sat on this panel over the last year or so have had this Office of Government Ethics report waved in front of us day after day after day, saying everybody has been exonerated. This is an independent agency. It is being run by someone who was appointed by the Bush Administration. How could you Republicans possibly raise questions about it?

Well, the point is that the Office of Government Ethics is not the investigative arm. It looks to the IG for that information, and now we are hearing, at least in my opinion, you are at least saying that there is a perception out there that the report or the information that came from the IG's Office, in fact, could be tainted because of the role that Ms. Kerner has played in the Inspector General's operation. Is that a fair thing for a nonlawyer to raise?

Mr. CESCA. Well, I think it is fair to say that there is that perception. But whether or not the investigation was compromised because of that, I don't believe that it was.

Senator MACK. Let me ask you, just a moment ago you said it troubled you to hear of this timing of these questions and creates this perception. It apparently was not just on one occasion that—I would use the word "almost coaching." Maybe that is not technically what I should be using, but it sounds to me that someone who works for the—who at one point worked for Jean Hanson, has been assigned to the IG, who is coaching individuals who were going to be interviewed the following day——

Ms. KERNER. Excuse me, sir. That did not take place. I really can't have you make that statement when there is no evidence of that and it didn't take place.

The CHAIRMAN. For their lawyers.

Senator MACK. That's what I meant, through the lawyers.

Ms. KERNER. Nothing like that occurred, sir.

Senator MACK. What I'm saying to you, there is an incredible perception—we have gone through the discussion about advance copies of transcripts being provided to the General Counsel, your assisting the General Counsel's Office in editing the reports. Now we talk about questions that are being prepared for Mr. Cottos and meetings with the interviewee's attorney prior to that, which as Mr. Cesca indicated creates the perception.

I will just go back and close my comments with this. We started out really this morning in your testimony with you stating basically four things that had to change, four things needed to be done concerning the employment relationship. I'm assuming that was done again to avoid a perception that you would be in a situation where you would be providing information to Jean Hanson. That's the reason that you demanded that they be done, if you were going to be put in this position.

But I'm telling you—again, I'm not an attorney, just somebody who is observing this—it sure seems to me that you did things that absolutely undermined this effort to create this wall that was built around you. That's the conclusion that I draw. I am not trying to imply in any way that you—let me—I am not trying to imply in any way that you began this effort or got involved in this effort for the purpose of undermining the investigation.

I am saying to you, you made a significant effort to avoid any kind of charges of conflict of interest and I'm saying I think that there were actions that you were involved in that, in fact, now raise that very serious question.

I thank you, Mr. Chairman.

Ms. KERNER. I would like to respond, if I could.

The CHAIRMAN. Yes, go ahead.

Ms. KERNER. With regard to the meetings with Defense Counsel, the meeting with Reid Weingarten, I am a former prosecutor. I meet with Defense Counsel. I have met with Defense Counsel on many occasions. Mr. Weingarten wanted to meet with me. I met with him as a matter of courtesy. He wanted to make a pitch that the diary should not be discussed, that there was no need to go into it. I told him that that was unacceptable to us.

So, once again, I feel I am being criticized because I did my job and did it appropriately. He had to be told unequivocally that he was going to answer questions on the diary. That is what I did when he raised it as an issue to begin with.

Senator MACK. If I can just add one additional thing then, with respect to the discussion.

The CHAIRMAN. Sure.

Senator MACK. I will now go back to Francine Kerner's deposition, page 135, 136, response to questions:

Question: Were portions of the diaries identified as subject questions?

Answer: I may have said to somebody looking at this one page of Steiner's documents, and I have no independent recollection of this, but it would be my practice to say something like, well, look, he is going to have to answer questions about—you may not consider that significant but obviously he is going to have to answer questions about X, Y, and Z in his diary.

Ms. KERNER. That's right. That's right.

Senator MACK. I think this is going a little bit too far.

Ms. KERNER. Sir, you may be right. From your approach, that may be your opinion.

I think when you have a reluctant witness who wants to try to avoid answering questions, and you have an attorney there who is arguing that the information is irrelevant, it is perfectly appropriate to say it is not irrelevant, it goes to his intent, it goes to what his mind-set was. That was the position I took with Mr.

Weingarten. In fact, I think I recall telling him unequivocally, Mr. Steiner cannot walk away from this diary.

The CHAIRMAN. Senator Sarbanes.

I have to make an observation. I've never heard of an investigation being conducted where you tell or outline the questions that are going to be raised at the investigation. If somebody at the hearing, if you were there and then going to make a ruling or make a determination, and say it's within the scope.

Mr. Cottos was disturbed—and this is the first I have heard of it—that on three or four different occasions, the situation arose where lawyers or people said I'm not going to answer, that's beyond the scope that had been indicated to me was going to be raised.

This meant you didn't do this just once, you met with a group of lawyers or lawyers over a period of time, at least on three or four occasions. His people had trouble because witnesses said oh, no, that question goes beyond what we were told we were going to be asked. Do you see the problems that Senator Mack outlined very clearly?

Ms. KERNER. Excuse me, sir. You also asked Mr. Cottos details for what he was talking about. I have no idea what he was talking about.

The CHAIRMAN. I'm sure that we'll ask him to go back and check his notes, we'll bring him back another day, and ask him specifically, and I will do this because I think it's important. Let's get it in the record if it's three or four times. It's very interesting. Other people recall with specificity these events. They have them noted. They have them written down but you don't recall this?

Ms. KERNER. Sir, there's no record that I'm aware of his making such a complaint and he called back—with regard to Hanson and Altman, the record is clear on this. I reviewed their depositions from the first time out. I prepared a second set of detailed comprehensive questions for Mr. Cottos and his attorneys to use. Again and again, my position was that there had to be probing questions. The same issue arose with regard to Mr. Altman's diary. It was an issue that was taken up by the Senate Banking Committee.

I was always of the position that the Secretary, Secretary Bentsen, had to be interviewed. I was of the position that others needed to be interviewed, and I always asked that the most probing questions be utilized.

The CHAIRMAN. Senator Sarbanes, I thank my colleague for being patient.

Senator SARBANES. Mr. Chairman, there's a lot of flailing going around here this morning, most of it from up here, if I may say so, and I just want to take a moment or two to try to get a couple of things on the record.

Mr. Chairman, you said last year at the time of the hearings, and I just quote you, "If I might make a point, I have to tell you, sending the depositions over to Mr. Cutler, I think that is a closed question."

Now, that was your comment last year, and that's what I think Ms. Kerner alluded to earlier as she was responding.

The CHAIRMAN. I was responding specifically about those depositions that were sent to Treasury and Mr. Schmalzbach, and the fact that after they were sent, according to Mr. Schmalzbach, he re-

turned them, and I don't know whose they were. I have reason to believe they certainly——

Senator SARBANES. That's another point you made.

The CHAIRMAN. That's a pretty important point.

Senator SARBANES. That's another point. But I'm addressing this point because this point has also arisen. What happens here is you keep mixing in these points and we need to separate them out so we can try to get them settled.

The CHAIRMAN. As it relates to Mr. Cutler, I did indicate—obviously, he was preparing, and it would seem to me fine if his investigation was complete, to send them over for his particular use. Now, if indeed, that information was made available to other counsels, that may be a different question and I don't know, but that information was made available to others, certainly I don't think that would have been in the view of the Chairman, appropriate. I would have thought that he would not make these available and I'm not saying he did. I don't know.

Senator SARBANES. Mr. Cutler will be here tomorrow and we'll hear from him. I understand in his deposition he said they were not made available, and he'll be here tomorrow and you'll have an opportunity then to question him.

The CHAIRMAN. Right.

Senator SARBANES. You did say yesterday, just to reemphasize the point, and I'm now quoting you, "well, that's what disturbs"—this was with Secretary Bentsen in an exchange—"well, that's what disturbs this Senator—and let me say I was not aware of the restriction that you had placed." That's when he sent them over to Mr. Cutler.

The CHAIRMAN. That's true. I was not.

Senator SARBANES. "And that had the letter and intent of that restriction been followed through, we would not even have had this inquiry." That's what you said yesterday and we'll have an opportunity when Mr. Cutler comes tomorrow to ascertain that.

The CHAIRMAN. Sure. The fact of the matter is I was not aware of the Secretary's restriction, and I think it was appropriate to place that restriction. Now, if the restriction was violated, and there seems to be some testimony that indicates that summaries were provided to various people, that would be inappropriate. I think that was my comment.

Senator SARBANES. Then the question would be what, if any, harm resulted from that if, in fact, that took place. As I understand it, Mr. Cutler will assert—at least he said in his deposition, I assume that's what he will say here tomorrow—that that did not happen. But even if some of it happened, what harm resulted from it? That's an important point here and we need to underscore that.

Now, Mr. Cesca has said that their investigation was not compromised. They feel today that they did a thorough and comprehensive and professional investigation and nothing happened to throw it off track. We're getting a lot of innuendo.

Senator Mack gets Ms. Kerner here, and she sends the questions, then there's a meeting. He assumes that the meeting was for a nefarious purpose, that it was a sinister meeting and that bad things happened at it. There's no evidence of that. In fact, Ms. Kerner testifies just to the contrary, that she was telling these people that the

diary would be a focus of questioning, should be a focus of questioning, contrary to the assertion of Defense Counsel.

The CHAIRMAN. I don't think—I raise this to my friend and colleague, I don't think it's inappropriate or would be unreasonable for a Senator to raise a question because I don't think Senator Mack has seen this information, certainly not before yesterday, an E-mail that, at 10:44, was apparently sent by Ms. Kerner to the investigator, Mr. Cottos, and that 16 minutes later, the lawyer for Josh Steiner, who the questions are being prepared for, meets with her.

Now, that's a fact. So the Senator—I think correctly—raises and says look, here you are preparing questions for the investigators to use tomorrow at an interview. You sent it out at 10:44 to Mr. Cottos, and within a matter of minutes, you're meeting with Mr. Steiner's lawyer. That raises questions—and I think the Senator said it in his own style, I'm not going to attempt to paraphrase it.

Senator SARBANES. What the Senator did is he drew nefarious conclusions. You can ask the question. You have an appearance. You have to go to what the realities are that underline the appearance, and that's not being done here. The realities go to whether anything wrong or improper was done; whether this investigation was impeded; whether, in fact, in the end we found out all of the relevant facts and know what the story is.

I mean, I don't think you ought to be casting about, trying to take things out of an appearance, create a reality of impropriety if that doesn't exist. That's really what the purpose of the inquiry is, as I understood it.

I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator.

Let me again address items as they come up. One of the issues here is the issue of editing. The question that I have is whether something untoward happened because suggestions were presented for inclusion or consideration for the report which you were writing. Now, Mr. Cottos, you received suggested edits, if you will, from Ms. Kerner; correct?

Mr. COTTOS. Yes, I did.

Mr. BEN-VENISTE. So to demystify what this is all about, we have the edits. You've been able to review them, haven't you?

Mr. COTTOS. Yes, I have.

Mr. BEN-VENISTE. They are document 2479 and following pages. You transmitted them to Mr. Blight?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. And you used your affectionate term for Ms. Kerner in the transmittal fax; correct?

Mr. COTTOS. There was some sarcasm there, yes, sir.

Mr. BEN-VENISTE. You didn't really mean that, did you?

Mr. COTTOS. No, I did not.

Ms. KERNER. I'm sorry, I have not seen this before. What is the number?

Mr. BEN-VENISTE. It's 2479 et seq., four pages: These are the edits that you suggested, Ms. Kerner; correct? Do you have that before you?

Ms. KERNER. Yes, I'm just looking at it. I don't know that these are edits I suggested, actually.

Mr. BEN-VENISTE. They may have included some that you suggested, or was it—let's clear that part up.

Mr. COTTOS. I think the question might be are these the comments that were made by the General Counsel's Office in reviewing the draft. I don't know. I got them from Ms. Kerner, and I relayed them to Mr. Blight.

Mr. BEN-VENISTE. The point of it is I'm reading them, and they seem to be totally innocuous.

Ms. KERNER. Excuse me, sir. Can I point out one thing?

Mr. BEN-VENISTE. Sure.

Ms. KERNER. Mr. Cottos earlier told this Committee that he didn't know where these edits came from, that I never told him they were from the General Counsel's Office. Yet at the bottom, he's saying that this is from the Secretary's review team, and that was not a reference to me or maybe he considered me part of the review team, I don't know. But certainly, the Secretary's review team, I take that to be a reference to the people the Secretary had asked to review the report, Ken Schmalzbach being the key person.

The CHAIRMAN. Why don't we ask Mr. Cottos. What did you mean, Mr. Cottos?

Mr. COTTOS. I meant that these comments came from Francine Kerner. I did not know that Ken Schmalzbach and the Office of the General Counsel were reviewing our draft.

Ms. KERNER. I don't know who the team was——

Mr. BEN-VENISTE. The point of it is whoever is the author of these magnificent suggestions, do they, in their totality, represent some effort to skew, mislead, impede, somehow deflect you from the truth in writing your report, Mr. Cottos?

Mr. COTTOS. No, they do not.

Mr. BEN-VENISTE. There are a bunch of references to the transcripts and the records; correct?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. Some stylistic suggestions and grammatical and syntax changes?

Mr. COTTOS. Yes.

Mr. BEN-VENISTE. Three pages of it?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. You sent it along to Mr. Blight for his review.

Mr. COTTOS. Yes, I did.

Mr. BEN-VENISTE. Do you have any reason to suspect that if Mr. Blight didn't want to put something in there that is reflected in these 3 pages, he would not have done so?

Mr. COTTOS. Well, again, I think something we have talked a lot about is that this report was not written by Ms. Kerner. It wasn't written by Mr. Cesca. It wasn't written by me. It was written by a group of people sitting around a table, probably 10 or 12 people going over these things. So it was not a work product of one person. It was a work product of a group.

Senator SARBANES. Which meant that any suggestions made by any individual were then subjected to the evaluation and the scrutiny of everyone else around the table; is that correct?

Mr. COTTOS. That's correct, Senator.

Mr. BEN-VENISTE. Now, with the Chairman's indulgence, I would like to follow up on this line. I don't understand why this red light is on.

The CHAIRMAN. It's just an indication that you're over, just as you provided, and we had the red light on, but we went over. You'll continue. I have no intent of cutting my colleagues off and I'll allow them to pursue their line of questioning. I think we're pretty close to wrap-up, but continue.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

As I understand this issue about communication with counsel for individual witnesses who you and your investigators were interviewing, Mr. Cottos, I must presume that there was some limitation on the scope of your inquiry——

Mr. COTTOS. Yes, there was.

Mr. BEN-VENISTE. —is that a fair statement?

Mr. COTTOS. Yes, there was.

Mr. BEN-VENISTE. You were not in a position, nor did you wish your investigators to go into areas with these witnesses that were irrelevant or tangential, or somehow inappropriate to the inquiry you were conducting?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. Indeed, would it be fair to say that you, from time to time, would have conversations with your own people, and with outside people representing witnesses, with respect to the proper scope of your inquiry?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. It is very much an attorney's function to find out what the scope of an inquiry is on behalf of the client. You wouldn't think there was anything improper or untoward with that?

Mr. COTTOS. No, I wouldn't.

Mr. BEN-VENISTE. So that in connection with conversations which you or Ms. Kerner may have had with outside attorneys regarding scope of the questioning, if I understand your testimony, your problem was one of a communication nature because you did not get the information from Ms. Kerner as directly as you would have wanted. Is that fair to say?

Mr. COTTOS. That's a fair statement, yes, sir.

Mr. BEN-VENISTE. But it is not a substantive problem that you were upset with the information that was provided, that somebody was told that the scope was different than you understood it to be?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. So again, we are in a no harm, no foul situation. There are problems of communication, but on the big ticket item, you got to ask questions about the scope of your inquiry in an unimpeded way?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. And with respect to the issue of suggested questions, if I understand your testimony, Ms. Kerner, and perhaps others, provided suggested questions for different witnesses?

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. Now, were these softball questions designed to somehow comfort the witnesses, or were they questions that needed

to be, in some cases, asked with respect to the various witnesses, take Mr. Steiner for example?

Mr. COTTOS. I really can't answer because I didn't really study the questions. Basically, what I did was take the questions and give them to the investigators and tell them to assimilate what they felt was necessary because I didn't review all the sets of questions that they had. So when I got the questions from Ms. Kerner, I just passed them on to the investigators.

Mr. BEN-VENISTE. You didn't know if they were duplicative of the questions which your investigators were already prepared to ask?

Mr. COTTOS. No, I didn't know.

Mr. BEN-VENISTE. Probably, you would have hoped your investigators would have come up with the same basic questions——

Mr. COTTOS. Yes, sir.

Mr. BEN-VENISTE. —as Ms. Kerner was providing to you.

So if I understand what your problem was in this regard, it was that Ms. Kerner didn't get them to you in sufficient time for you to do some intermediate review of them before you passed them along to your investigators?

Mr. COTTOS. That's correct.

Mr. BEN-VENISTE. So, having said all of that, again, from a substance standpoint, there was not anything bad about this, was there?

Mr. COTTOS. No, sir.

Mr. BEN-VENISTE. You were all under a great deal of pressure to get this job done in a rather compressed timeframe?

Mr. COTTOS. Yes, we were.

Mr. BEN-VENISTE. With respect to Ms. Kerner's suggested questions, whether they were used by your investigators or not, they had the benefit of them, but they were certainly not instructed by you, you must ask each one of these questions?

Mr. COTTOS. No, I did not instruct them that.

Mr. BEN-VENISTE. Nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

There are just a couple of things I want to focus on. First of all, Mr. Cottos, I want to get back to this issue Mr. Ben-Veniste just raised about your having investigators who were in interviews who learned from the attorneys for the witnesses that certain questions were off limits based on those lawyer's conversations with Ms. Kerner. Did I understand you to tell Senator Mack that's what happened?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. So what happened was not that Ms. Kerner was giving guidance to you or your investigators and discussing with them what's off limits, she was having conversations that you and the investigators were not participating in with the lawyers for the witnesses, setting the ground rules; right?

Mr. COTTOS. That's correct.

Mr. CHERTOFF. You were learning about that when the lawyers told you, oh, I spoke to Ms. Kerner and she told me it's off limits?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. Is that the customary way you like to conduct your investigations?

Mr. COTTOS. No, sir.

Mr. CHERTOFF. Let me now turn to the issue of what harm was done here. I think you were asked a question in the last 10 minutes about whether, when you watched the Senate Banking Committee hearings, you observed or you were concerned that there was any harm that came from the fact that the transcripts had been provided to the witnesses, and I want to ask you about an answer you gave in your deposition. This is at page 221 of your deposition.

Question: Do you have any reason to believe that anyone before the Congress altered their testimony based upon having read either the depositions or your report?

Answer: I think that in the testimony of it, Mr. Altman—he indicated that he had gotten copies of all of our interviews, and because he contradicted one of the questions that was asked, that was the first I knew that Treasury people had been given copies of the transcripts prior to the completion of the report. That was a concern to me because I don't know whether anyone else altered their testimony based on being able to read anyone else's transcripts.

Now, do you remember the particular passage of the testimony—221 of the deposition—do you remember the passage from last year's hearings where Mr. Altman—one of the passages where he brought it up?

Mr. COTTOS. Yes, sir. When I was watching the hearings, and I don't remember which Senator it was—someone asked him—he said Mr. Ickes, I believe, testified to something, and Mr. Altman said no, Mr. Ickes didn't say that, and the Senator said how do you know what Mr. Ickes said, and he said because I read his deposition. That's when it occurred to me or realized that our depositions had been passed out.

Mr. CHERTOFF. Do you remember watching Mr. Ickes' testimony?

Mr. COTTOS. No, I didn't.

Mr. CHERTOFF. Let me ask you whether you saw a portion of Mr. Altman's testimony where he discussed having read Ms. Hanson's transcript?

Mr. COTTOS. No, I don't.

Mr. CHERTOFF. Now, do you remember from your investigation that Mr. Altman and Ms. Hanson had, let's say, somewhat contrary views or memories of the facts?

Mr. COTTOS. Yes, sir.

Mr. CHERTOFF. There were some very important issues about whether Mr. Altman directed Ms. Hanson to go and do certain things that she seemed to say that he had done.

Let me raise this with you and ask you for your comment about it. This was a question—this is at page 430 of last year's hearing record, volume 3. It was in response to a question from Senator Sarbanes about whether it's possible that Ms. Hanson misunderstood an instruction by Mr. Altman.

Mr. ALTMAN. Senator, my response is that I don't recall tasking her to do it. I think I would have remembered if I had done it. I have a lot of respect for Jean Hanson, we're friends and we're colleagues and I hope we're going to remain so. I'm simply saying that she may have misunderstood.

Senator SARBANES. Well, I'm trying to——

Mr. ALTMAN. For example, Senator, I saw a transcript of a deposition she gave, and if I have it right, she was asked whether I instructed her to go to the White House. She said I can't recall. It was my sense that he may have wanted me to. Then she was asked a second time, did he or did he not instruct you to go to the White House, and as I recall the deposition, doing my best to recall it, she said, I

can't recall, it was my impression. So she hasn't said, at least in those responses, he asked me to go. She's saying I can't recall.

Am I not correct, Mr. Cottos, isn't that the very thing you were concerned about? You have a witness who is now aware of, based on a certain fragility in Ms. Hanson's earlier deposition, exactly how far he can push his own recollection of the events of the conversations of Ms. Hanson. He knows, based on the deposition, that Ms. Hanson didn't give a positive, absolutely certain statement. So he's able to say well, you know, she didn't really remember either.

Isn't that exactly the kind of tailoring of testimony that occurred in the hearings that we had here last year that was precisely the concern you expressed from the very beginning of this investigation until the very end, about the turning over of transcripts?

Mr. COTTOS. Yes, sir, it is.

Mr. CHERTOFF. Finally, Mr. Cottos—by the way, Ms. Kerner, do you see what the problem is with that? You understand what the problem is; right?

Ms. KERNER. I think I was thinking about something else while you went through that. I'm sorry——

Mr. CHERTOFF. Never mind.

Ms. KERNER. That's fine.

Mr. CHERTOFF. Let me ask you this, Mr. Cottos. Finally, the question was raised by Mr. Ben-Veniste about the nature of the kinds of changes that Ms. Kerner was suggesting. I think you have before you the document that she sent. It's dated July 21, 1994. It's from Kinko's Copies.

On page 3, there was a suggested correction that she made to the discussion of Dennis Foreman's testimony. Now, you remember Dennis Foreman was the Deputy General Counsel of the Treasury who had a 2-minute conversation with Ms. Hanson about the fact that she was going over to the White House. Ms. Hanson's testimony was that that was an ethical blessing of her going over to the White House. I guess you all took an opinion or position on that, and let me remind you of what the statement is, and ask you for your comment.

Ms. Kerner's suggestion is—Ms. Kerner first takes the statement out of—repeats the statement, and the statement is according to Dennis Foreman, prior to Hanson and Altman leaving Treasury to go to the White House, Hanson requested Foreman to review the one page of paper entitled "talking points." Foreman's review of the talking points lasted 2 minutes. Based upon the 2-minute review, Foreman offered the opinion that no nonpublic information was included in the talking points. According to Foreman, he was not provided an opportunity to conduct research or contact RTC to confirm the information in the talking point paper.

Then Ms. Kerner identifies her problem.

This is hitting below the belt. Foreman makes it very clear he didn't need more than 2 minutes. He knew the issues were in the public domain. He didn't need to research the issue. Why write something that suggests he was denied an opportunity to do research or contact RTC when neither was an issue in Foreman's mind. He had concrete reasons for reaching his conclusion but those aren't reported. Why not?

Wasn't this the particular comment that finally caused you to say to Ms. Kerner, we're not the Jean Hanson defense team?

Mr. COTTOS. Yes, sir, it was.

Mr. CHERTOFF. Finally, Ms. Kerner, let me ask you this——

Ms. KERNER. Excuse me. May I comment on that point, please?

Mr. CHERTOFF. Sure.

Ms. KERNER. If you take a look at the final report, which I don't have a copy of here, and compare it to Mr. Foreman's deposition, I think that you would agree that the final report is a much fairer statement of his transcript than the original provision set forth here.

Mr. CHERTOFF. Are you telling us that your suggestion actually got incorporated?

Ms. KERNER. Absolutely, and I'm happy that it did, because this was not fair and what I suggested was.

Mr. CHERTOFF. Finally, Ms. Kerner, let me ask you this: At some point when you were in the middle of all of this, communicating with Mr. Schmalzbach, communicating with the General Counsel's Office, communicating with the lawyers for the individuals, trying to respond to the Secretary's needs, trying to deal with what the witnesses wanted, trying to counsel the Inspector General's Office, did you become concerned that maybe you were getting into a conflict of interest, that you just had too many people who you were trying to satisfy?

Ms. KERNER. I did my job as an advocate, and my job included liaison functions. I know of no reason to regret anything I did at that time, sir.

Mr. CHERTOFF. All right. Thank you, Mr. Chairman.

The CHAIRMAN. Fine.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. Cesca, much has been made this morning, and yesterday as well, of Ms. Kerner's transmission of deposition transcripts to lawyers working for Secretary Bentsen in July 1994. Were you aware that it was Mr. Schmalzbach's responsibility, or at least one of his responsibilities, to collect information for Secretary Bentsen at that time?

Mr. CESCA. Yes, I was. I was aware that Mr. Schmalzbach was responsible for preparing the Secretary for his testimony before the two Committees.

Mr. KRAVITZ. In that regard, was it important for Mr. Schmalzbach to collect as much factual information as possible for Secretary Bentsen?

Mr. CESCA. Yes, it was.

Mr. KRAVITZ. I'm sorry?

Mr. CESCA. Yes, it was.

Mr. KRAVITZ. You think it was important——

Mr. CESCA. I think it was appropriate. It was appropriate for him to collect as much information as he could to prepare the Secretary to testify before the Committees.

Mr. KRAVITZ. In your opinion, was it also appropriate for Mr. Schmalzbach to request copies of the deposition transcripts so that he could then use them to prepare Secretary Bentsen?

Mr. CESCA. I think it was appropriate for him to make that request.

Mr. KRAVITZ. Now, similarly, are you aware that back in July 1994, Mr. Cutler also was conducting an investigation over at the White House?

Mr. CESCA. Yes, I was.

Mr. KRAVITZ. In your view, was Mr. Cutler's internal review at the White House similar or analogous to an Inspector General investigation that might have been conducted at another agency?

Mr. CESCA. I would say there were certain similarities associated with that.

Mr. KRAVITZ. What were those similarities?

Mr. CESCA. At the White House there is no Inspector General by which that responsibility could be delegated to, and so Mr. Cutler became the obvious choice in the White House to conduct that kind of an inquiry.

Mr. KRAVITZ. Mr. Cutler's inquiry, as you understood it, was similar to an IG's inquiry in that he was trying to determine whether any White House officials had acted improperly; is that correct?

Mr. CESCA. That's correct.

Mr. KRAVITZ. Whether he should be making a recommendation to his principal, the President, as to any personnel decisions or other managerial actions?

Mr. CESCA. That's correct.

Mr. KRAVITZ. That's the type of work that an IG does; is that correct?

Mr. CESCA. That's correct.

Mr. KRAVITZ. Is it common for Inspectors General from different agencies to share information?

Mr. CESCA. I think it depends on the nature of the investigation. If there is a need to share information between Inspectors General or there's some commonality regarding the particular investigation, then it is a practice to share information.

Mr. KRAVITZ. Would you agree that there was significant commonality between the investigation being conducted by the IG's of the RTC and the Treasury and the factual investigation, the internal review being conducted by Mr. Cutler?

Mr. CESCA. I think Mr. Cutler was given the responsibility to conduct a very similar investigation, so there was that common thread.

Mr. KRAVITZ. In your view, was this an appropriate situation for sharing of information or otherwise cooperating between the two investigations?

Mr. CESCA. Yes, I do.

Mr. KRAVITZ. Now, initially, when the question of whether the IG deposition transcripts should be provided to Mr. Cutler over at the White House, your reaction was a negative reaction; is that correct?

Mr. CESCA. That's correct.

Mr. KRAVITZ. I believe in your deposition, you described that as a visceral reaction?

Mr. CESCA. That's correct.

Mr. KRAVITZ. Did you later change your mind?

Mr. CESCA. Yes, I did.

Mr. KRAVITZ. When was that?

Mr. CESCA. That was later on that day. It was the evening of July 23.

Mr. KRAVITZ. How did you come to change your mind on the question of whether it was appropriate to send deposition transcripts over to Mr. Cutler?

Mr. CESCA. During the afternoon of July 23, I deliberated that initial decision that I made. Some of the factors that I took into consideration, one, we had completed our investigation. All depositions had been taken, sworn depositions, with the exception of one, the Comptroller of the Currency. We were advised by OGE to take a deposition from him.

Mr. KRAVITZ. Let me interrupt you there and ask a follow-up question. As of July 23, 1994, which was the day on which the transcripts were sent over to the White House, was the IG's report final?

Mr. CESCA. The report itself was not final. It was in draft form. In normal investigative processes, normally we don't issue a draft report.

Mr. KRAVITZ. Was this draft report more final than draft reports often are?

Mr. CESCA. In my view, it was more final than normal draft reports.

Mr. KRAVITZ. Why is that?

Mr. CESCA. Because from our standpoint, we had produced a report, even though it was in draft form, to be issued to the Office of the Government Ethics. It was an accommodation to the Office of Government Ethics to allow them to review the draft report.

Mr. KRAVITZ. Is what you're saying that the only reason that the report as of July 23 was officially deemed a draft report was that you had sent it over to the OGE for them to comment on, but in all other regards, that draft report was, in fact, a final report?

Mr. CESCA. That's correct. For all intents and purposes, we could have sent a draft report to the Office of Government Ethics and they could have returned it and said we have no comments.

Mr. KRAVITZ. You also mentioned that another reason for your change of view on whether the transcripts should go over to the White House was that all of the depositions, except for one, had been taken; is that correct?

Mr. CESCA. That's correct.

Mr. KRAVITZ. Did you also understand that all of the witnesses had testified in front of the Grand Jury or at least had been interviewed by the Office of Independent Counsel?

Mr. CESCA. I can't respond as to whether all witnesses had testified before the Grand Jury because I don't know the list of witnesses that were called before the Grand Jury.

Mr. KRAVITZ. You understood that a significant number, if not all, of the witnesses had been interviewed by the Independent Counsel's Office?

Mr. CESCA. I was aware that some of the witnesses were called before the Grand Jury.

Mr. KRAVITZ. Just so everyone is clear, that means that they had testified under oath on the record.

Mr. CESCA. That's correct.

Mr. KRAVITZ. Those same witnesses had testified a second time under oath on the record in depositions taken by the Inspectors General offices?

Mr. CESCA. That's correct.

Mr. KRAVITZ. Did the fact that witnesses were locked in in sworn testimony, twice by the time that you were making this decision about whether to send transcripts over to the White House, also have an effect on your decision at that time?

Mr. CESCA. Yes, it did.

Mr. KRAVITZ. How is that?

Mr. CESCA. Well, I felt as though we had a record of what each of the witnesses had to say and there was no way that record could be altered, by virtue of the fact that the transcripts had been communicated.

Mr. KRAVITZ. Mr. Cesca, do you understand that by the time that the Senate Banking Committee held its hearings last summer, the Banking Committee had received copies of the IG deposition transcripts? Do you know that?

Mr. CESCA. That's correct. You're talking about the hearings that were conducted by the Senate Banking Committee?

Mr. KRAVITZ. Yes.

Mr. CESCA. That's correct.

Mr. KRAVITZ. In August 1994?

Mr. CESCA. Right.

Mr. KRAVITZ. So is it your view, then, that if witnesses had tailored or changed their testimony before the Senate, back from the time that they testified before the IG's in those depositions, certainly someone on the Senate Banking Committee could have pointed that out?

Mr. CESCA. I think a discrepancy would have surfaced.

Mr. KRAVITZ. Do you remember hearing about any discrepancies between deposition transcripts——

Mr. CESCA. No, I'm not aware of that. I might also add that the Senate Committee also had their own investigators that were interviewing those witnesses.

Mr. KRAVITZ. Also taking sworn testimony under oath?

Mr. CESCA. Well, I wasn't aware whether they were taking testimony under oath, but I do know they were interviewing witnesses.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. CHERTOFF. Very quickly, Mr. Chairman, if I might.

The CHAIRMAN. Go ahead. Let's try and wrap it up.

Mr. CHERTOFF. I want to make sure I'm clear on this latest issue that Mr. Kravitz raised, Mr. Cesca. First of all, are you telling us you made the decision to send the transcripts over on July 23?

Mr. CESCA. Yes, I did.

Mr. CHERTOFF. You started out the day opposed to it?

Mr. CESCA. That's correct.

Mr. CHERTOFF. You got a call from Mr. Knight?

Mr. CESCA. Well, I received a message that Mr. Knight had called. I did not speak to Mr. Knight.

Mr. CHERTOFF. You agreed to having them go over at the end of the day around 6:30, 7 o'clock at night?

Mr. CESCA. That's correct.

Mr. CHERTOFF. Did you know that the White House and the Treasury General Counsel's Office had already reached an agreement to ship the stuff over?

Mr. CESCA. I was not aware of that agreement.

Mr. CHERTOFF. Oh, you weren't?

Mr. CESCA. I was not aware of that agreement.

Mr. CHERTOFF. Did you know Secretary Bentsen had told Mr. Cutler by July 1 he would be getting the transcripts?

Mr. CESCA. I was not aware of that agreement.

Mr. CHERTOFF. Nobody told you about that?

Mr. CESCA. No, they did not.

Mr. CHERTOFF. Was it your belief——

The CHAIRMAN. Was that July 1?

Mr. CHERTOFF. July 1. As of July 1, there was an agreement.

The CHAIRMAN. As of July 1, there was an agreement?

Mr. CHERTOFF. Yes, that's 23 days before you agreed to it. You did not know that; right?

Mr. CESCA. I did not know that.

Mr. CHERTOFF. Is it your position that when the materials were sent over to the White House on July 23—and I take it this was urgent—you were getting—they were pressing you to get it over there on July 23. Was it your belief that, as of July 23, the Senate had completed all of its depositions?

Mr. CESCA. As of July 23, it was my belief that the Senate had not completed its depositions.

Mr. CHERTOFF. Did you know there were at least a couple witnesses left?

Mr. CESCA. I didn't know how many there were, but I was aware that the Senate had not completed all their depositions.

Mr. CHERTOFF. Did that issue come up as a reason not to turn the depositions over?

Mr. CESCA. It did not come up.

Mr. CHERTOFF. Do you want to guess who the person from the White House was deposed the very next day on the 24th?

Mr. CESCA. Do I want to guess?

Mr. CHERTOFF. Do you know?

Mr. CESCA. No, I don't know.

Mr. CHERTOFF. Did you know it was Harold Ickes?

Mr. CESCA. No, I didn't know that.

Mr. CHERTOFF. Finally, I want to ask you this, Mr. Cesca. If you believed the investigation was complete as of July 23, why did you—what was your reaction 4 days later when you got a memo from Mr. Knight saying that the view of the Secretary was you shouldn't turn over the same transcripts to the Senate because the view of the Secretary was, "Your inquiry cannot be considered complete until the Office of Government Ethics has advised you that it has all the information necessary to issue its opinion"? Did you think that was inconsistent?

Mr. CESCA. I don't think it was inconsistent because the distinction there was that even though our investigation was complete, the report of investigation was not complete. It was pending the receipt of comments that we were expected to receive from the Office of Government Ethics.

Mr. CHERTOFF. So it was complete enough to go to the White House but not complete enough to have the same transcripts sent over here. Is that it?

Mr. CESCA. Right.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Counsel, try to wrap it up, please.

Mr. BEN-VENISTE. Yes, I will be very brief, I think. The notion, if I follow Mr. Chertoff's reasoning, that he raised the question of Mr. Ickes testifying on July 24 in the Senate deposition after the transcripts had been sent over on July 23 is that somehow, the information contained in the transcripts would make their way into Mr. Ickes' mind so that he could have the benefit of those to tailor his testimony on July 24. That's what would have concerned you; right, Mr. Cottos?

Mr. COTTOS. Yes, it is.

Mr. BEN-VENISTE. Mr. Cesca.

Mr. CESCA. That would have concerned me if that had taken place.

Mr. BEN-VENISTE. Now, in fact, if we can, in the words of Senator Bentsen yesterday, get into the world of reality, what actually happened was that Mr. Ickes testified on the 24th in a manner inconsistent with every other witness at a particular meeting. His inconsistency then forms the basis for questioning whether there was some divulging of information later on when Mr. Altman is questioned in public hearings. So the notion is exactly the opposite of what the facts are. Do you follow that, Mr. Cesca?

Mr. CESCA. Right.

Mr. BEN-VENISTE. Does this seem, in passing, strange to you?

Mr. CESCA. It seems strange to me.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. No.

The CHAIRMAN. I want to thank the witnesses for their appearance. We will resume at 1:45 p.m. We stand in recess.

[Whereupon, at 12:40 p.m., the hearing was recessed, to be reconvened at 1:45 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I am going to ask the witnesses at this time if they would rise for the purpose of taking the oath.

[Whereupon, Edward Knight, Kenneth R. Schmalzbach, Stephen J. McHale, Robert M. McNamara, Jr., and David Dougherty, were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. We will start with Mr. Knight and go right on over. If anyone has a statement to submit for the record or wants to make an opening statement, we will be happy to receive them.

SWORN TESTIMONY OF EDWARD KNIGHT GENERAL COUNSEL, U.S. DEPARTMENT OF THE TREASURY FORMER EXECUTIVE SECRETARY OF THE TREASURY DEPARTMENT AND SPECIAL ASSISTANT TO THE SECRETARY

Mr. KNIGHT. No, sir.

SWORN TESTIMONY OF KENNETH R. SCHMALZBACH ASSISTANT GENERAL COUNSEL, GENERAL LAW AND ETHICS U.S. DEPARTMENT OF THE TREASURY

Mr. SCHMALZBACH. No, sir.

SWORN TESTIMONY OF STEPHEN J. McHALE DEPUTY ASSISTANT GENERAL COUNSEL, GENERAL LAW AND ETHICS, U.S. DEPARTMENT OF THE TREASURY

Mr. MCHALE. No, sir.

SWORN TESTIMONY OF ROBERT M. McNAMARA, JR. ASSISTANT GENERAL COUNSEL, ENFORCEMENT U.S. DEPARTMENT OF THE TREASURY

Mr. MCNAMARA. No, sir.

SWORN TESTIMONY OF DAVID DOUGHERTY ATTORNEY ADVISOR, GENERAL LAW AND ETHICS U.S. DEPARTMENT OF THE TREASURY

Mr. DOUGHERTY. No, sir.

Mr. DOBROVIR. I'm William Dobrovir, counsel for Mr. Dougherty, and I have a very brief statement.

The other witnesses on this panel were told a month ago that the Committee wanted their testimony, and their depositions were taken about 2 weeks ago, and they presumably have had the transcripts of their depositions for at least some days. The Committee informed them on or before October 30 that they were to testify today, and the Treasury Department provided them with counsel to assist them to prepare for this hearing.

The Committee's intention to take Mr. Dougherty's deposition was not confirmed to him until noon on Monday, November 6. His deposition was taken beginning at 4:30 p.m. that same day. Mr. Dougherty was informed at 8 a.m. yesterday that the Committee wished him to testify today. He immediately called and asked me to represent him. I did not receive a transcript of Mr. Dougherty's deposition until about 7 p.m. yesterday.

I just want to be on the record, Mr. Dougherty has not had sufficient time to prepare properly for this hearing, unlike the other witnesses. However, he will answer your questions to the best of his ability.

The CHAIRMAN. I appreciate that. If we have any difficulty, be sure that we will give Mr. Dougherty the opportunity to reappear, if that is necessary. So, I hope that that does not take place. I'm going to ask now that we proceed.

Why don't we, for purposes of the record, have the witnesses again, from left to right as I'm looking out, introduce themselves with their title. We will start with Mr. Knight.

Mr. KNIGHT. Mr. Chairman, I'm the General Counsel for the Treasury Department, Edward Knight.

Mr. SCHMALZBACH. I'm Kenneth Schmalzbach, the Assistant General Counsel for General Law and Ethics.

Mr. MCHALE. I'm Stephen McHale, the Deputy Assistant General Counsel for General Law and Ethics.

Mr. MCNAMARA. I'm Robert McNamara, Assistant General Counsel for Enforcement.

Mr. DOUGHERTY. I'm David Dougherty. I'm an attorney advisor in Mr. Schmalzbach and McHale's office. That is the administrative—general law and ethics.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Dougherty, let me just begin with you and ask you a question that came up this morning. Am I correct that it was in early July 1994 that you became aware of the fact that the General Counsel of the RTC, Ellen Kulka, was concerned about Treasury not providing information to anybody that came from the RTC's depositions?

Mr. DOUGHERTY. I believe, sir, that's a little bit more specific than what I knew. I knew early in July that Ms. Kulka was very concerned that no RTC information be disseminated, of any kind, be disseminated by anybody but RTC.

Mr. CHERTOFF. You knew that as early as July from Mr. Schmalzbach?

Mr. DOUGHERTY. Mr. Schmalzbach had reported to me—reported a conversation he had with Ms. Kulka to that effect.

Mr. CHERTOFF. As of early July?

Mr. DOUGHERTY. To the best of my recollection, it was early July. I emphasize, it did not go to any specific things. In fact, the conversation had to do not with what we are talking about today but with the documents that were produced for the hearings last year.

Mr. CHERTOFF. Now, Mr. Schmalzbach, you were an Assistant General Counsel at Treasury last year, in the summer of 1994?

Mr. SCHMALZBACH. Yes, sir.

Mr. CHERTOFF. You have to use the mike.

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. In connection with that, were you assigned to assist in preparation of the Secretary and other witnesses in connection with upcoming hearings in the House and Senate related to the contacts between Treasury officials and White House officials about Whitewater?

Mr. SCHMALZBACH. It was my responsibility to assist in preparing the Secretary. We were also considering what, if any, assistance would be given to other Treasury witnesses.

Mr. CHERTOFF. Am I correct that at least when the process was in the early stages, which is to say in March and April and May and even as late as June, you had it in mind that you would be playing some kind of a role with respect to preparing not only the Secretary but other Treasury witnesses including Mr. Altman, Ms. Hanson, and Mr. Foreman?

Mr. SCHMALZBACH. Again, that possibility was—I don't know when I started thinking about preparing them for Congressional hearings. But when I started working on this in the spring, we were trying to figure out what we ought to do by way of assisting other Treasury witnesses in testifying about their official duties.

Mr. CHERTOFF. Now, at the same time that you were doing that, as of June 1994, were you also having conversations with Francine Kerner regarding her responsibilities as Counsel for the Inspector General in connection with the Inspector General's inquiry?

Mr. SCHMALZBACH. Not other than a very brief discussion regarding a memorandum that I understood Francine had drafted for the Deputy Inspector General to send to Jean Hanson regarding Francine's role.

Mr. CHERTOFF. That memorandum which we heard about this morning basically said that Ms. Kerner was not to be reporting about the investigation or discussing the substance of the investigation with anybody but the Inspector General; am I correct about that?

Mr. SCHMALZBACH. I'm sorry. Could you repeat that?

Mr. CHERTOFF. That memorandum said that Ms. Kerner was not to be reporting to anybody or discussing the substance of the investigation with anybody except for the Inspector General?

Mr. SCHMALZBACH. What the memorandum says it says. That's not an exact quote.

Mr. CHERTOFF. Is that your recollection of it?

Mr. SCHMALZBACH. I'm lousy on remembering language in documents. Whatever it says it says.

Mr. CHERTOFF. You are lousy at remembering language in documents. Excuse me for a minute.

You have before you a letter of June 27, 1994, to Jean Hanson from Robert Cesca. It is document 389.

Mr. SCHMALZBACH. I'm not sure that I do.

Mr. CHERTOFF. We will make sure you get another copy. We will have someone walk it down to you. Maybe you can read it on the screen. Can you see that?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. The second paragraph:

> Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

Do you remember seeing that letter?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Did you see it on or around June 27?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. You were not part of the investigating Inspector General's staff; correct?

Mr. SCHMALZBACH. That's correct.

Mr. CHERTOFF. Now, in late June 1994, in connection with your considering what your duties might be for preparing Treasury witnesses for the hearings, were you considering how the fruits of the Inspector General's investigation, the deposition transcripts, the interviews might be used to help prepare Treasury witnesses?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Tell us what you were considering about that.

Mr. SCHMALZBACH. Say again?

Mr. CHERTOFF. What were you considering about that?

Mr. SCHMALZBACH. Just what our role should be. There were a variety of possible roles from none whatsoever to assisting them, asking—forming questions that the Senate might ask them. There were a host of possibilities.

Mr. CHERTOFF. Wasn't one of those roles to see if it was possible to get information from the Inspector General's investigation and factfinding and get that information to the Treasury witnesses so that they could use it to prepare?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. In fact, in connection with that, didn't you consider whether you might use the information obtained from the Treasury—from the Treasury Inspector General's investigation and depositions to prepare the witnesses, without telling them exactly what the source was, but using all the information collected from the testimony to prepare the other witnesses?

Mr. SCHMALZBACH. I have seen a note that I wrote to that effect, so yes, I'm sure that was something we considered.

Mr. CHERTOFF. Well, just so we enlighten everybody about the note, it is 16000. It is a note dated June 21, 1994. So this is late June. This is about a week before this investigation actually got underway, and it says, "Wall off DF from IG fact-finding." DF is Dennis Foreman; right?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. He was your boss?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. He was one of the critical witnesses in the investigation?

Mr. SCHMALZBACH. He was a witness in the investigation.

Mr. CHERTOFF. You expected him to testify before Congress?

Mr. SCHMALZBACH. We recognized that as a possibility. He was actually marginal. But certainly that was possible.

Mr. CHERTOFF. When it says here, "Wall off DF from IG fact-finding," does that indicate you recognized it was necessary to have Dennis Foreman walled off from the Inspector General's investigation; right?

Mr. SCHMALZBACH. I am not sure whether that was something I wrote down or whether it was something that Jane Ley told me.

Mr. CHERTOFF. You wrote it down; right?

Mr. SCHMALZBACH. Right. I am not sure it was something I said.

Mr. CHERTOFF. You think the Office of Government Ethics told you that?

Mr. SCHMALZBACH. It is conceivable Jane Ley told me that.

Mr. CHERTOFF. She is from the Office of Government Ethics.

Mr. SCHMALZBACH. Right, she's their Deputy General Counsel.

Mr. CHERTOFF. They are the people who judge the ethical propriety here?

Mr. SCHMALZBACH. Right.

Mr. CHERTOFF. Your understanding is, whether it was your own idea or her idea, you knew Dennis Foreman was supposed to be walled off; right? That's what it says.

Mr. SCHMALZBACH. I knew that was Jane Ley's view, yes.

Mr. CHERTOFF. Did you disagree with that?

Mr. SCHMALZBACH. I didn't completely agree with it.

Mr. CHERTOFF. Did you decide you wanted to kind of get around her view?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. Well, the next sentence says, "But DF and JH"—JH I guess is Jean Hanson; right?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. "Does need info. as [Key] Treasury witness. Maybe in preparing DF and JH, no need to ID what source of facts." Was your thought here that you could use the information gained from transcripts of depositions to prepare Jean Hanson and Dennis Foreman but you simply wouldn't tell them exactly where you got this information as you prepared them?

Mr. SCHMALZBACH. That appears to be what that thought was.

Mr. CHERTOFF. Was this designed as a way of kind of getting around this notion of a wall between Mr. Foreman and the investigation?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. So when you say here, "But DF does need info. as Treasury witness. Maybe in preparing DF and JH, no need to ID what source of facts," that wasn't your idea of how to respond to the earlier sentence about walling off Mr. Foreman from IG fact-finding?

Mr. SCHMALZBACH. No, that's not what I meant.

Mr. CHERTOFF. That's not what you meant?

Mr. SCHMALZBACH. No. We——

Mr. CHERTOFF. You have no doubt that you wrote it, though?

Mr. SCHMALZBACH. Oh, no.

Mr. CHERTOFF. As the investigation continued, you had conversations with Ms. Kerner about a number of subjects; correct?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. You talked to her about scheduling?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. There came a time when she gave you transcripts of the depositions?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. When was the first time she gave you transcripts of the depositions?

Mr. SCHMALZBACH. I am not sure exactly when it was. It was sometime on or after July 8 and before July 13.

Mr. CHERTOFF. Do you remember how many you got?

Mr. SCHMALZBACH. No, not precisely. My sense of it is 4 to 6 but I don't remember.

Mr. CHERTOFF. Four to 6 depositions. Given the fact that I think the depositions began being taken on the 6th, is it fair to say that she started giving you transcripts relatively soon after they were prepared?

Mr. SCHMALZBACH. She gave them to me sometime between July 8 and July 13.

Mr. CHERTOFF. Now, on July 13 what did she do? What did she do on July 13? Did she ask for them back?

Mr. SCHMALZBACH. At some point on or before July 13 she asked for them back.

Mr. CHERTOFF. Did she tell you why?

Mr. SCHMALZBACH. I don't remember whether she did or not.

Mr. CHERTOFF. What was your reaction to that?

Mr. SCHMALZBACH. I gave them back to her.

Mr. CHERTOFF. Were you irritated?

Mr. SCHMALZBACH. I don't recall being irritated.

Mr. CHERTOFF. You don't recall being irritated?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. Do you recall having a conversation with her about it?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. No recollection whatsoever?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. Excuse me for a moment.

When did you get the transcripts back again? You returned them on or around July 13.

Mr. SCHMALZBACH. On July 18.

Mr. CHERTOFF. They came back on July 18?

Mr. SCHMALZBACH. Right.

Mr. CHERTOFF. What did she tell you in connection with giving you back these transcripts on July 18?

Mr. SCHMALZBACH. I don't remember what she told me. I am not sure they were physically handed to me in any case and I don't remember a conversation.

Mr. CHERTOFF. Did they come with an E-mail, a message of some kind, a memorandum?

Mr. SCHMALZBACH. Not that I recall.

Mr. CHERTOFF. Did you have any conversation or communication with her?

Mr. SCHMALZBACH. I don't remember.

Mr. CHERTOFF. Let me ask you whether you were ever aware of an E-mail that Ms. Kerner sent to Mr. Cottos in connection with her giving you the transcripts on July 18?

Mr. SCHMALZBACH. Yes, I learned about it in listening to the testimony this morning.

Mr. CHERTOFF. That is the first you knew about it. It is quite clear in your mind, is it not, that you first got those transcripts sometime before July 13 and you had them in your possession for a number of days until she asked for them back; right?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Then you got them back again on July 18?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Did you ever ask her why she was sending the transcripts back and forth to you.

Mr. SCHMALZBACH. I may have. I simply don't have any recollection of a conversation with her about it.

Mr. CHERTOFF. There were 4 to 6 transcripts as you recall?

Mr. SCHMALZBACH. That's my best guess as to how many there were.

Mr. CHERTOFF. Was one of them Ms. Hanson's transcript?

Mr. SCHMALZBACH. I believe so, yes.

Mr. CHERTOFF. Do you remember any of the other transcripts?

Mr. SCHMALZBACH. Not with any certainty. For some reason, Mr. Dudine—I think that is how you pronounce his name. His name sticks in my mind.

Mr. CHERTOFF. Mr. Dudine was an RTC investigator?

Mr. SCHMALZBACH. Actually, I don't know what he was.

Mr. CHERTOFF. An RTC official?

Mr. SCHMALZBACH. Yes, he was an RTC employee.

Mr. CHERTOFF. Besides Mr. Dudine and Ms. Hanson, do you remember any other transcripts you got?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. During this period of time within this week or so where you were first getting the transcripts with Ms. Kerner, were you having contact with lawyers for some of the individual witnesses, such as Mr. Altman and Ms. Hanson?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Do you remember who you were having contact with?

Mr. SCHMALZBACH. Harvey Pitt, John Keeney, Paul Curnan, possibly Bob Bauer.

Mr. CHERTOFF. Richard Beatty?

Mr. SCHMALZBACH. I may have. I certainly was aware that Mr. Beatty had spoken to someone in the Department. I'm not sure whether I talked to him directly or not.

Mr. CHERTOFF. Mr. Pitt was Ms. Hanson's lawyer?

Mr. SCHMALZBACH. Correct.

Mr. CHERTOFF. Mr. Beatty and Mr. Curnan were Mr. Altman's lawyers?

Mr. SCHMALZBACH. That's right.

Mr. CHERTOFF. Did you have discussions during this period in early July about these lawyers complaining about the fact that the Inspector General didn't want to have one witness know what another witness was going to say?

Mr. SCHMALZBACH. It might have happened. I don't remember any such conversations.

Mr. CHERTOFF. Well, let's go to your to-do list of July 9, 1988 and 1989. It is in front of you. Do you have that?

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. Let's go over to the next page. At the beginning, it says:

Cooperation—Beatty conversations? Continue to permit IG demands to interfere with preparing other Treasury witnesses? IG doesn't want one Treasury witness to know what another Treasury witness will say, but that is normal preparation for Congressional hearings.

And then it goes on to say:

The specifics: Debrief witnesses after IG testimony; Foreman already, Hanson deposition today. Share IG transcripts once received/IG finished.

What were the discussions surrounding these entries?

Mr. SCHMALZBACH. The discussions surrounding these entries were with other attorneys in the Department who were preparing Secretary—who were working on preparing Secretary Bentsen for testimony.

Mr. CHERTOFF. Was Mr. Beatty one of the attorneys in the Department?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. He was a lawyer for Mr. Altman?

Mr. SCHMALZBACH. Right.

Mr. CHERTOFF. Were the lawyers for Mr. Altman or Ms. Hanson complaining to you about the way the Inspector General was trying to keep the information from circulating around?

Mr. SCHMALZBACH. I don't believe they were complaining to me.

Mr. CHERTOFF. Did Mr. Beatty—did you learn they were complaining to Mr. Knight?

Mr. SCHMALZBACH. I actually don't remember them complaining about the IG. Probably if I were in their shoes I would have been.

Mr. CHERTOFF. Mr. Knight, do you remember Mr. Beatty complaining to you about the direction of the Inspector General inquiry?

Mr. KNIGHT. No, I received no complaints about the IG inquiry.

Mr. CHERTOFF. Mr. Schmalzbach, look at your notes, 16019. It is in front of you.

You see there it says at the top "EK 7/13/94."

Mr. SCHMALZBACH. Yes.

Mr. CHERTOFF. It was your habit to write contemporaneous notes in your record book of conversations or meetings; right?

Mr. SCHMALZBACH. Or notes in advance of a conversation.

Mr. CHERTOFF. Who does EK refer to?

Mr. SCHMALZBACH. Ed Knight.

Mr. CHERTOFF. That's the man sitting to your right; right?

Mr. SCHMALZBACH. Right.

Mr. CHERTOFF. What is this entry here, "Beatty concern about direction of IG inquiry"? Does this indicate that Mr. Knight talked to you about this, told you about it, or that you told Mr. Knight about it?

Mr. SCHMALZBACH. It doesn't really resolve it one way or the other. It could have been either.

Mr. CHERTOFF. What happened here on July 13?

Mr. SCHMALZBACH. I don't remember.

Mr. CHERTOFF. You don't remember?

Mr. SCHMALZBACH. No.

Mr. KNIGHT. On July 13, I was on a plane from Naples, Italy, with Secretary Bentsen.

Mr. CHERTOFF. Mr. Knight, are you telling me you didn't talk to Mr. Schmalzbach on July 13, then?

Mr. KNIGHT. I don't see how I could have.

Mr. CHERTOFF. Did you have a phone on the plane?

Mr. KNIGHT. There might have been, but I can tell you I was not talking about this on a phone on a plane.

Mr. CHERTOFF. What about the day before, did you talk to him the day before?

Mr. KNIGHT. No, I was not talking to the office about this subject at the time. I had other responsibilities.

Mr. CHERTOFF. So, Mr. Schmalzbach, you have no idea why you made this entry?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. Mr. Knight, are you saying you didn't have responsibilities involving the issue of the direction of the Inspector General's inquiry or the handling of the transcripts?

Mr. KNIGHT. I'm just making a comment about the date. From July 7 through July 13, I was on a trip with Secretary Bentsen to a G7 meeting in Naples, Italy. I do not recall talking to Ken about this subject at that time. I don't believe I did.

Mr. CHERTOFF. You were back on July 14?

Mr. KNIGHT. I was back on July 14, yes.

Mr. CHERTOFF. Mr. Schmalzbach, did you talk to Mr. Knight about it on July 14?

Mr. SCHMALZBACH. I do not remember talking to him about it at all.

Mr. CHERTOFF. This was a note to yourself to raise it with Mr. Knight?

Mr. SCHMALZBACH. It might have been.

The CHAIRMAN. Let me ask you something. You have this, "Beatty concern about direction of Inspector General's inquiry." Now Beatty is a lawyer? Who is Beatty?

Mr. SCHMALZBACH. Yes, he was one of Roger Altman's attorneys.

The CHAIRMAN. So somehow in your diary we have Roger Altman's lawyer was concerned about the direction of the Inspector General's inquiry; right? You wrote that, didn't you?

Mr. SCHMALZBACH. Yes.

The CHAIRMAN. Nobody else wrote it. What did you mean by that?

Mr. SCHMALZBACH. I don't remember why I wrote it down. Presumably it was information that had come to my attention and that I felt at that point felt I should talk to Ed about it. I don't remember ever talking to Ed about it.

Mr. CHERTOFF. Mr. Knight, were you in contact with Mr. Cutler on a regular basis in July 1994, about when Mr. Cutler could get those transcripts?

Mr. KNIGHT. No, I was not.

Mr. CHERTOFF. Did you have conversations with him in July about this subject?

Mr. KNIGHT. I don't recall any conversations with Mr. Cutler about this subject.

Mr. CHERTOFF. When did you first learn that the Secretary of the Treasury, Mr. Bentsen——

Mr. KNIGHT. Not about the depositions at all.

Mr. CHERTOFF. On the issue of the deposition transcripts, when did you first learn that the Secretary and Mr. Cutler had reached an agreement about that?

Mr. KNIGHT. Frankly, I didn't know until the testimony yesterday of Secretary Bentsen that there was such an agreement.

Mr. CHERTOFF. You didn't know until yesterday's testimony there was an agreement between Mr. Bentsen and Mr. Cutler on this?

Mr. KNIGHT. I was asked by the IG's Office to inquire about Secretary Bentsen's opinion with regard to the disposition of the depositions. I discussed it with him around July 22 or July 23. He told me he thought that it was reasonable for us to cooperate with Mr. Cutler's office, and then I communicated that sometime after that to Mr. Cesca.

Mr. CHERTOFF. That's the first time you had a conversation with Mr. Bentsen or Mr. Cutler about the issue of getting the transcripts at the White House?

Mr. KNIGHT. Yes, I never discussed this with Mr. Cutler. The discussions with Mr. Cutler that I had were about documents at the beginning of the process, not about depositions.

Mr. CHERTOFF. Well, let me read you from Mr. Cutler's testimony in his deposition. This starts at page 36. This is to Mr. Cutler:

Question: Well, to the extent you can recall any discussion about it, did you ask Mr. Bentsen about collaborating and getting the information gained by the Inspectors General from Treasury witnesses having that furnished to the White House?

Answer: I believe either before Mr. Summers came in or at the very end of the lunch, yes.

This refers to a lunch on June 21:

Question: What did the Secretary say?

Answer: He agreed in principle with the idea that we should share and collaborate. I believe it was left that I would work it out with Mr. Knight, his special assistant, or that Jane and Sheila would work it out with Mr. Knight or other people in the Treasury.

Did you know about that at the end of June?

Mr. KNIGHT. I did not.

Mr. CHERTOFF. I will continue at page 43:

Question: Either at the meeting on the 21st or afterwards in the period before you actually began your internal review, when you had phone calls with Mr. Bentsen, did Mr. Bentsen agree with you to furnish transcripts of the Inspector General depositions for purposes of your use in your internal review?

Answer: Well recollection is that an agreement had been reached either at his direction or with his approval and reached at the Ed Knight level that we would make our witnesses available as had been requested, I think by Mr. Cesca and that we would see the transcripts of the testimony taken by the Treasury Inspectors General of not only our own witnesses but of the Treasury witnesses as well. My conversations with Mr. Bentsen after that were to express concern that we had not yet received the transcripts.

Did you know about agreements at the Ed Knight level that took place before the July 23?

Mr. KNIGHT. There was no agreement with me. I became aware that there was an issue around July 22. I received a request from Mr. Cesca's office to ask the Secretary his opinion, and I did that and conveyed that back.

Mr. CHERTOFF. All right. Page 47:

Question: As of the beginning of July, did you have a concept of the timeframe within which you would receive those transcripts?

This is Mr. Cutler's answer:

Answer: Yes. I believe we expected to receive them as soon as they had been—as soon as the interviews had been completed, the transcripts had been prepared and verified.

Question: Your understanding was you would get the transcripts on a rolling basis?

Answer: Yes.

Question: From whom did you get that understanding at Treasury?

Answer: I believe we had that understanding from a combination of my talks with the Secretary and Mr. Knight. It may have been also there was such an understanding at a lower level.

Was there another Mr. Knight operating on behalf of——

Mr. KNIGHT. He mentioned me obviously because I was assisting the Secretary, but I believe if you parse that sentence out, he said I believe it may be at other levels.

I don't see that that is an unqualified statement of where he received this. All I can attest to is what my memory is and my memory is that I communicated first to the Secretary about this on July 22 or 23.

Mr. CHERTOFF. Page 49, we're getting more specific:

Question: Did anybody from Treasury talk to you personally about any restrictions being placed on your use of the transcripts at the point in time you were beginning to go forward with your interviewing process, the beginning of July?

Answer: My recollection is I had discussions with Mr. Knight about the timing of when we would receive the transcripts in which he indicated to me that there were some objections from within the Treasury at lower levels as to delivering us the transcripts on a seriatim basis.

Did that happen?

Mr. KNIGHT. I did not discuss them with him. I believe those discussions occurred at another level. The letter that evidences those limitations, as you know, is from Mr. McHale to Ms. Sherburne, and that's where the discussions occurred.

Mr. CHERTOFF. I know there is a letter on July 23. We are here at the beginning of July with Mr. Cutler. You know Mr. Cutler; right?

Mr. KNIGHT. Yes, I do.

Mr. CHERTOFF. You have certainly talked to him on many occasions?

Mr. KNIGHT. I wouldn't say many occasions. I remember my discussions with Mr. Cutler because of his stature, importance, who he is. I just do not have a memory of a discussion such as the one that you are describing there. It is—we are talking about events that occurred well over a year ago.

Mr. CHERTOFF. I have to keep going. I have to try and refresh your memory.

Question: When did you have that conversation?

Answer: I cannot be certain but I had a number of conversations with Mr. Knight throughout July.

Question: What did he tell you were the objections?

Answer: Once again, I think in our conversations it was fairly general. It was the issue of whether before the completion of an Inspector General investigation it would be appropriate for any of the transcripts to be shown to anybody.

Now, did you know, Mr. Knight, there were objections from within Treasury to turning over the transcripts?

Mr. KNIGHT. I knew that there was a debate going on. I do not know if I would characterize it as objections. I had no extensive discussions about this around July 22. My assignment was to find out what Secretary Bentsen's opinion was on this subject.

Mr. CHERTOFF. What was your understanding of the debate?

Mr. KNIGHT. That Mr. Cesca hadn't resolved in his mind whether they should be turned over and that there were competing concerns and that he wanted the Secretary's views.

Mr. CHERTOFF. And you are telling us that you did not have ongoing discussions with Mr. Cutler throughout July based on an agreement that he evidently had with Mr. Bentsen in which you discussed the timing of turning over the transcripts; that did not happen?

Mr. KNIGHT. No, I just don't have a memory of it.

Mr. CHERTOFF. You will agree with me you had over half-a-dozen conversations with Mr. Cutler during that period of time?

Mr. KNIGHT. In early May I had discussions with Mr. Cutler and I had some discussions with him at the beginning of July with regard to his viewing of sensitive documents that we had agreed to share with him. Those were documents that we were not going to give him custody of. He asked to see those, and I brought them over for him to see.

Mr. CHERTOFF. The point of this, Mr. Knight, is we are trying to figure out who made the decision to get the transcripts over. Mr. Bentsen told us yesterday and Mr. Cutler told us in his deposition that there was an agreement well before July 23. Evidently, the Inspector General was under the illusion that he was making the decision on July 23 when apparently the deal was already done at a higher level. Mr. Cutler has introduced you into this mix, which is why I'm pursuing it.

Didn't you have a meeting with Mr. Cutler at the White House on July 6 with Mr. McNamara?

Mr. KNIGHT. We provided him access to the sensitive documents.

Mr. CHERTOFF. Did the issue of transcripts come up?

Mr. KNIGHT. It did not. I can only tell you, Mr. Chertoff, that because this issue has been of some importance in the ensuing period, I have searched my memory thoroughly, and my only recollection is around that period, and as I read Mr. Cutler's, or hear Mr. Cutler's statements, they seem to be qualified in some respect. I believe the discussions could have been conveyed at another level.

Mr. CHERTOFF. I don't think these are qualified. I have to keep reminding you about this. I am going to show you—this is again—now we're at page 67:

Question: I am going to show you S 7845, which is a page from your calendar dated July 6, which would be the day after the meeting involving Ms. Sherburne that we talked about a couple moments ago. Does this indicate at 11:30 you had a meeting with Mr. Knight and Mr. McNamara?

Answer: Well, it certainly indicates it was on the schedule and I believe that meeting occurred.

Question: Do you remember the meeting?

Answer: I remember a discussion with Mr. Knight and Mr. McNamara on this subject, yes.

Question: When you say "this subject," you mean the subject of the transcripts?

Answer: Yes.

Didn't happen in your mind?

Mr. KNIGHT. No, sir.

Mr. CHERTOFF. Now, let me ask you this, Mr. McHale, when did you prepare the letter and prepare the copies of the transcripts that would go over to the White House?

Mr. MCHALE. I prepared the letter on July 23. The copies of the transcripts were prepared at my direction on July 23.

Mr. CHERTOFF. Isn't it a fact that at the beginning of the day or earlier in the day on July 23, your understanding was that Mr. Cesca was opposed to turning the transcripts over?

Mr. MCHALE. I believe in an early conversation with Mr. Cesca on that day, he did not express a view as to whether he opposed it or not. He said he needed to talk to Ms. Kerner.

Mr. CHERTOFF. Isn't it a fact that he only agreed late in the day, meaning around 7 o'clock in the evening?

Mr. MCHALE. I would have put it a little earlier, maybe late afternoon.

Mr. CHERTOFF. Would it help you if I told you that he was at church, he came back and his testimony is he arrived back sometime after 6:00 or 6:15?

Mr. MCHALE. I can just state what my recollection is. My recollection would be it would be late afternoon. It could have been as late as 7 o'clock.

Mr. CHERTOFF. Mr. Dougherty, when did you actually make arrangements to take the documents over to the White House?

Mr. DOUGHERTY. It was sometime in the late afternoon. This was in July, I would point out, and it didn't get dark until about 9 o'clock. We had been working 7 days a week. I think our internal clocks may have been a little less accurate than what was on the wall. So it could have been—my recollection was that it was late afternoon at 4 o'clock or so, but it could well have been as late as 8 o'clock. My recollection is very clearly that it was still light when I went over there.

Mr. CHERTOFF. I want to make sure your recollection hasn't been changed because of the fact that you have heard some of this testimony. I want to remind you, 8 o'clock in the evening is not the afternoon; right?

Mr. DOUGHERTY. No, it is evening.

Mr. CHERTOFF. Let me go back to your deposition, page 68:

Question: What did you do after he asked you to contact someone in the White House Counsel's Office to arrange a delivery?

Answer: I called whoever it was that he had suggested.

Question: Do you recall if it was in the afternoon, at night?

Answer: Afternoon. My best—to the best of my recollection, it was in the afternoon.

Question: Any specific reason why you think it was the afternoon?

Answer: Given the time I recall arriving at the office, the other things that were going on, I mean I know other things were going on besides that, I'm sure I had things that were overdue from the Friday before and it would have been the afternoon. Yes, it would have been the afternoon based on that and this is an aspect that I have previously reviewed rather carefully and was able to refresh my recollection, to remember devices to cause me to reach the conclusion that it was sometime in the afternoon.

Was that your testimony a couple days ago?

Mr. DOUGHERTY. Yes, it was.

Mr. CHERTOFF. Did you say late afternoon? Did you say 8 o'clock?

Mr. DOUGHERTY. Certainly I did not. This is the testimony that I gave. I would perhaps explain, the question I thought I was being asked was whether it was first thing in the morning. Probably somewhat earlier, you might see on page 67, Mr. O'Callaghan asked me what time I came in, and we seem to be getting at did this occur in the morning. So, I went through a few things that I knew that I—knew that kept me from doing it first thing in the

morning. So it was sometime later in the afternoon, and it could have been evening.

Mr. CHERTOFF. Well, you were asked specifically, "Do you recall if it was in the afternoon? At night?" You said, "Afternoon."

Mr. DOUGHERTY. I'm sorry, Mr. Chertoff. I don't see that question—oh, I see it. That's right.

Mr. CHERTOFF. I am right; right?

Mr. DOUGHERTY. Right.

Mr. CHERTOFF. Did you also know that summaries of the depositions were being prepared at the Office of the General Counsel?

Mr. DOUGHERTY. Yes, I did.

Mr. CHERTOFF. Were a number of lawyers working on them?

Mr. DOUGHERTY. Yes, there were.

Mr. CHERTOFF. Was one of the lawyers a deputy to Mr. Bowman?

Mr. DOUGHERTY. There were a few lawyers who, as far as I know, the only thing they did with regard to this matter came from offices other than Mr. Schmalzbach's. One of them came from Mr. McNamara's office, whose name I don't recall. One whose name is a name I mentioned in my deposition was in Mr. Bowman's office.

Mr. CHERTOFF. Mr. Bowman was a witness; right?

Mr. DOUGHERTY. Actually, I don't know whether he was or not.

Mr. CHERTOFF. He was deposed on July 13.

Mr. DOUGHERTY. OK. I want to make it clear that the people that I referred to who assisted in these summaries were called in specifically to do that under Mr. McHale's direction and were supervised solely by Mr. McHale and were not under the direction of anybody other than Mr. McHale as far as I knew.

Mr. CHERTOFF. How many lawyers in the Office of the General Counsel got their hands on these transcripts? Would you estimate how many were looking at them, summarizing them, whatever? Half a dozen?

Mr. DOUGHERTY. I can only speak, Mr. Chertoff, to those that I knew about.

Mr. CHERTOFF. How many?

Mr. DOUGHERTY. That would have been the 5 of us on the team, presumably. Actually, I can't even say for certain that Mr. McNamara and Mr. Schmalzbach actually had them in hand. I never saw them have them in hand. Mr. McHale, myself, and another lawyer in our office who was also on the team. That makes 3.

Mr. CHERTOFF. I think it is 5 actually. You have Schmalzbach, McHale, McNamara, you, and another lawyer from your office.

Mr. DOUGHERTY. I just said, I can't testify as to whether Mr. McNamara or Mr. Schmalzbach ever saw the deposition summaries. So, there were 3 of us that I know of, and then I believe 3 others who were called in to do that specific task over about a 2-day period.

Mr. CHERTOFF. Did you send the transcripts over to the White House along with—I'm sorry, the summaries over to the White House along with the transcripts?

Mr. DOUGHERTY. Not to my knowledge.

Mr. CHERTOFF. Did you ever send the summaries over to the White House?

Mr. DOUGHERTY. I have no recollection of ever sending them there.

Mr. CHERTOFF. Have you seen a document or a note that indicates you had a conversation with Ms. Sherburne about that?

Mr. DOUGHERTY. I was shown at my deposition a redacted—what appeared to be a paragraph of a redacted memorandum, the author of which was not identified.

Mr. CHERTOFF. I think it was Ms. Conaway. I am sorry. I misspoke.

Mr. DOUGHERTY. Nevertheless, I don't know who the author was from the document.

It appeared to be a brief summary of one or more discussions that the author had with me that she was summarizing and reporting to someone—named Jane, who I assume was Jane Sherburne.

Mr. CHERTOFF. Let me see if I can furnish you with a copy of this. I think you have it in front of you.

Mr. DOUGHERTY. I'm sorry, I don't, Mr. Chertoff. I have the deposition which I don't think is accurate. I would like to see the document.

Mr. CHERTOFF. You don't think the deposition is accurate?

Mr. DOUGHERTY. I don't think the characterization in the deposition of the document is accurate, no.

Mr. CHERTOFF. Let's put the document up and we will have you look at it.

Mr. DOUGHERTY. Thank you.

Mr. CHERTOFF. It says here "Jane"—this is item 2, "David Dougherty at Treasury"——

Mr. DOUGHERTY. Excuse me. I don't think we have the right document here.

Mr. CHERTOFF. It is the last page.

Mr. DOUGHERTY. Yes, we have.

Mr. DOBROVIR. "Jane, I read Steiner's transcript"——

Mr. CHERTOFF. Yes, the second paragraph:

David Dougherty at Treasury told me the RTC has not yet agreed to release its transcripts, but may do so tomorrow. He said they seem very touchy about the transcripts, and expressed to him some dismay that Treasury had given them to the White House. RTC's concern is that it does not want nonpublic information released that could impair its investigations. He stressed that it is important that nothing in the transcripts be made public, at least with attribution, until they are released. I told him we understood that.

Did you say that to someone in the White House?

Mr. DOUGHERTY. I recall having that conversation, yes.

Mr. CHERTOFF. With who?

Mr. DOUGHERTY. I believe it was with Ms. Conaway. It could have been with Sheila Chesterton.

Mr. CHERTOFF. Did you tell them that the summaries were not to "be made public, at least with attribution"?

Mr. DOUGHERTY. We are talking here in that paragraph, Mr. Chertoff, about the transcripts. That's the only conversation I recall having, was one about the transcript, which is in paragraph 2.

Mr. CHERTOFF. You remember that conversation?

Mr. DOUGHERTY. I remember that conversation.

Mr. CHERTOFF. Let's go down to the next paragraph, "This afternoon," and this is July 27:

He gave me summaries of the transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel. I faxed the Katsanos summary to Bill Taylor, and corrected one statement that inac-

curately reflected the testimony. I told Taylor's associate of Treasury's concern about not attributing information to the transcripts.

Now, that first sentence there, "he gave me summaries of the transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel," did you say that?

Mr. DOUGHERTY. I don't recall saying that, sir.

Mr. CHERTOFF. Do you deny saying it?

Mr. DOUGHERTY. I don't deny saying it, no. I don't recall saying it, sir.

Mr. CHERTOFF. You are basically not disputing what is contained in this document; you are saying you don't remember it but——

Mr. DOUGHERTY. I never saw the document before Monday night or evening, late afternoon, however we are characterizing that period of time, that I was deposed. That was the first time that I saw it. It was the first time I had ever, to my recollection, there had ever been any suggestion that I had that conversation and at the time that I saw the document, I didn't recall it, and since that time, try as hard as I have been able to over the last few days, I absolutely cannot recall that conversation.

Mr. CHERTOFF. Did anybody tell you that although the transcripts had to be held, the summaries could be handed out to witnesses and their counsel?

Mr. DOUGHERTY. Not that I recall, no.

Mr. CHERTOFF. I want to ask everyone at the table, certainly Mr. Schmalzbach and Mr. McHale and Mr. McNamara who were in the General Counsel's Office at the time, did any of you authorize the unrestricted distribution of summaries of transcripts?

Mr. SCHMALZBACH. No.

Mr. MCHALE. Not that I recall.

Mr. MCNAMARA. No, sir.

Mr. CHERTOFF. Who did?

The CHAIRMAN. At that point, we are going to take a short break and then we are going to go to Senator Sarbanes. We will come back——

Mr. DOBROVIR. If I may say something about this document dated July 27. Some doubt about it and its authenticity appears from that date, and where in paragraph 2, the writer says that "RTC has not yet agreed to release its transcripts but it may do so tomorrow." Whereas we have already looked at a letter from Mr. McHale dated July 23, which was the day that Mr. Dougherty delivered the transcripts to the White House. So I think that there is a question here about this, and I don't——

The CHAIRMAN. About the authenticity of the document? We got this document, Counsel, from the White House.

Mr. DOBROVIR. The dates certainly don't jibe, sir.

The CHAIRMAN. We got this from the White House. That's why we raise this question. If we have to, we will have Ms.—is it Jane?—Sherburne and ascertain. . . . I guess she is here. We can ask her how this was produced. But let's understand, we did get it from the White House.

Mr. DOBROVIR. From the testimony that Mr. Dougherty has given, he delivered those transcripts 4 days before that.

Mr. CHERTOFF. Are you suggesting, Mr. Dobrovir, that you think someone may have created the document after the fact to try to justify what happened with the summaries?

Mr. DOBROVIR. I am too good a lawyer to do that, sir. I am just saying there is a discrepancy and I can't resolve it.

The CHAIRMAN. There are many discrepancies.

Senator Sarbanes.

Senator SARBANES. Mr. Dougherty, on this timing, as I was reading your deposition, this was about going over to the White House with the delivery?

Mr. DOUGHERTY. Yes, Senator.

Senator SARBANES. I take it the questioning started off, what time did you get to the office, and you said 9:30 or 10 o'clock in the morning.

Mr. DOUGHERTY. That's correct.

Senator SARBANES. Then they started questioning you about it, and at that point you made the point that, or you were trying to fix the time, and then they said do you recall if it was in the afternoon, at night? Originally, they started off on the presumption it was in the morning from the questioning.

Mr. DOUGHERTY. That's correct.

Senator SARBANES. So the question to you was, "Do you recall if it was in the afternoon or essentially at night?" And your response was afternoon; is that correct?

Mr. DOUGHERTY. That's right, Senator.

Senator SARBANES. As distinguished from being at night.

Mr. DOUGHERTY. Senator, as I recall the questioning, what I had in my mind at the time was distinguishing between afternoon and morning or perhaps distinguishing between daylight and nighttime. I knew that it wasn't in the morning. I knew it wasn't after dark. The only thing that I knew, and when I said afternoon, I meant it wasn't after dark, nor was it before lunch.

Senator SARBANES. Actually, the question to which you gave the answer was, "Do you recall if it was in the afternoon, at night?"

Mr. DOUGHERTY. That's right, Senator.

Senator SARBANES. That's on page 68. "Do you recall if it was in the afternoon, at night?" And you distinguished that it was not at night; you thought it was in the afternoon.

Mr. DOUGHERTY. That's right, Senator. I don't dispute that I said that. But as you might recall, a few minutes ago I stopped Mr. Chertoff and said I don't think that was the question.

Senator SARBANES. Yes.

Mr. DOUGHERTY. He pointed it out to me that in fact that was the question and my recall of the question, and it may have been what I even heard, what I thought I heard at the time was not a distinguishing between day and night, between day and night as a *time* but between *late* in the day or at night.

Senator SARBANES. Right. Did you take the transcripts over to the White House?

Mr. DOUGHERTY. No, Senator, I didn't take the transcripts to the White House. I took them to the 17th Street entrance of the Old Executive Office Building.

Senator SARBANES. Who did you deliver them to?

Mr. DOUGHERTY. I am not certain, but I believe it was either Sharon Conaway or Sheila Chesterton.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Mr. McNamara, in July 1994, when the issue of whether deposition transcripts should be transmitted to the White House for Mr. Cutler's use came up, did you have discussions with any other officials within the Treasury Department regarding whether that would be proper?

Mr. MCNAMARA. I had discussions with Mr. Schmalzbach, Mr. McHale, and I believe Mr. Knight, at different times. We knew that there was sort of a standing request from the staff about that, and we did discuss it.

Mr. KRAVITZ. Did you and your colleagues at the Treasury Department come to any conclusion as to the ethical or legal propriety of those transcripts being transmitted to the White House for Mr. Cutler's use?

Mr. MCNAMARA. Yes, we did.

Mr. KRAVITZ. What was that conclusion?

Mr. MCNAMARA. We concluded that there were no legal impediments to it, and in fact, because Mr. Cutler was conducting a lawful investigation at the request of the President into an area in which there was a legitimate inquiry being conducted, that it would probably be inappropriate not to provide him information so that he could do two things: No. 1, conduct a complete and full and thorough investigation to report back to the President; and No. 2, be prepared to testify fully and completely and accurately before this Committee and before the House Committee that he was preparing to do so.

Mr. KRAVITZ. So is it accurate to say that not only did you and your colleagues at the Treasury Department feel that there was no legal or ethical impediment to the transcripts being sent to Mr. Cutler, but you actually concluded that there was an affirmative duty on the part of the Treasury to send those transcripts to Mr. Cutler?

Mr. MCNAMARA. Absolutely. In fact, I think the Secretary testified that, had he not provided that material, and, as a result of that, either directly or indirectly, inaccurate information was relayed to the Committee, both this one and the House Committee, that he could be appropriately criticized, and we did not want that to happen.

Mr. KRAVITZ. Mr. McHale, I think the implication may have been made earlier today that you may have pressured Mr. Cesca on July 23 to change his mind and to approve the sending of the transcripts over to the White House. Did you pressure Mr. Cesca on that day?

Mr. MCHALE. No.

Mr. KRAVITZ. What did you do?

Mr. MCHALE. My best recollection is that I spoke to Mr. Cesca sometime, possibly late on July 22 or early on July 23. I had earlier had a discussion with Ms. Sherburne in which she requested that the transcripts be sent over. Mr. Cesca's reaction to my telling him that we had this request was that he needed to talk to Ms. Kerner.

In a subsequent conversation with Mr. Cesca and Ms. Kerner, I relayed to Mr. Cesca and Ms. Kerner that Mr. Knight had told me that Secretary Bentsen believed it was appropriate for the transcripts to go to the White House if it would not interfere with the investigation. I also said that it was my understanding the transcripts were going to be made public within a matter of days and that there really was no reason not to comply with that request.

Mr. KRAVITZ. If Mr. Cesca had come back to you and told you that sending the transcripts over to the White House would have interfered with the IG's investigation, would you have overruled Mr. Cesca and insisted that the transcripts be sent to the White House?

Mr. MCHALE. I would have no authority to overrule Mr. Cesca.

Mr. KRAVITZ. That did not happen in any respect?

Mr. MCHALE. It did not happen in any respect.

Mr. KRAVITZ. Thank you. Senator Sarbanes, that's all I have.

Mr. BEN-VENISTE. I have a question with respect to the importance of whether these transcripts went over on July 23 in the morning, at noon, 2 o'clock, 5 o'clock, before church, after synagogue.

It is clear, is it not, that the Secretary of the Treasury, who testified before us yesterday, said it was his decision that Counsel to the President of the United States should have the benefit of those transcripts prior to the time that Mr. Cutler would give testimony before the Congress. Does anyone disagree with that?

Mr. KNIGHT. No.

Mr. BEN-VENISTE. Does anyone have reason to believe that these transcripts were used in some way to skew, alter in some nefarious way affect the report of the OGE?

Mr. MCHALE. No.

Mr. SCHMALZBACH. No.

Mr. KNIGHT. No, sir.

Mr. BEN-VENISTE. Is there any possible way for that to have happened?

Mr. DOUGHERTY. Not that I'm aware of, sir.

Mr. MCHALE. To skew the report of the OGE?

Mr. BEN-VENISTE. Yes.

Mr. MCHALE. No.

Mr. SCHMALZBACH. No.

Mr. BEN-VENISTE. So now the question is that these witnesses who were the subject of the transcripts who have given their testimony before the Independent Counsel, have given their testimony before your Inspectors General, they have given testimony before the Senate Committee in deposition form, prior to their testimony in open session, and then the fourth time they testify under oath is before this Committee in open session last summer. Is there any notion that, in some material way, the substance of the information presented to the American people has been affected by the transmittal of these transcripts? Does anyone have that notion?

Mr. MCHALE. No.

Mr. SCHMALZBACH. No, sir.

Mr. MCNAMARA. No.

Mr. KNIGHT. No.

Mr. DOUGHERTY. No.

Mr. BEN-VENISTE. I have no further questions.

The CHAIRMAN. Mr. Dougherty, what is the name of your counsel?

Mr. DOUGHERTY. Mr. Dobrovir, William A. Dobrovir.

The CHAIRMAN. Mr. Dobrovir, you have a copy of this White House Counsel's Office transmission, do you not.

Mr. DOBROVIR. Yes, sir.

The CHAIRMAN. It's dated—put that up, please? Its dated July 27, 1994, to Bill Taylor.

Mr. DOBROVIR. I have it in front of me, sir.

The CHAIRMAN. It's from Sharon Conaway?

Mr. DOBROVIR. That's what it says.

The CHAIRMAN. Are you suggesting to this Committee that this document and 4 pages following, somehow is a forgery that the White House somehow gave us this and it doesn't exist or it was created?

Mr. DOBROVIR. No, sir.

The CHAIRMAN. I just wondered because I didn't understand. I thought that possibly—let me ask Mr. Dougherty, do you know Sharon Conaway?

Mr. DOUGHERTY. I met her in the course of the work we are talking about, Mr. Chairman.

The CHAIRMAN. In what capacity did she serve in when you met her?

Mr. DOUGHERTY. As far as I know, she was on Mr. Cutler's staff.

The CHAIRMAN. On Mr. Cutler's staff. That is what, Counsel to the White House?

Mr. DOUGHERTY. As a Staff Attorney in the Office of Counsel to the White House. That's my understanding.

The CHAIRMAN. Did she work for—who did she work for?

Mr. DOUGHERTY. I'm not certain what the reporting structure was. My assumption is that she reported to Jane Sherburne.

The CHAIRMAN. So if you read this, after the transmittal page we have what would appear to be a summary of Steve Katsanos. Do you know who Katsanos is?

Mr. DOUGHERTY. No, I don't know who—I don't know him.

The CHAIRMAN. Mr. McNamara, do you know who he is?

Mr. MCNAMARA. I've heard his name, sir, but I don't know who he is, Mr. Chairman.

The CHAIRMAN. Do you know who he was, Mr. Dougherty?

Mr. DOUGHERTY. I believe I saw something recently that he was an RTC employee. In fact, now that you mention it, he was an RTC employee, that's right.

The CHAIRMAN. Mr. Schmalzbach, do you know who that was?

Mr. SCHMALZBACH. Yes.

The CHAIRMAN. You know who that was; right?

Mr. SCHMALZBACH. Yes.

The CHAIRMAN. Who was that?

Mr. SCHMALZBACH. He was—well, aside from Director of Corporate Communications, which is on the screen before me, I knew that he served a public affairs function at the RTC.

The CHAIRMAN. This is a summary, obviously, of his testimony, of his deposition; is that not correct, Mr. Schmalzbach?

Mr. SCHMALZBACH. I don't know what this is.

The CHAIRMAN. You don't know what this is? You've never seen this before, the summary?

Mr. SCHMALZBACH. Whether I've seen it before—I didn't work on the summaries. It sort of looks like the style of the summaries, but I'm not familiar.

The CHAIRMAN. Let's put up the front page—go back to the White House Counsel's Office facsimile transmission. You see that's going to Bill Taylor. Do you know who Mr. Taylor is, Mr. Dougherty?

Mr. DOUGHERTY. No, the first—I didn't hear of his name before Monday.

The CHAIRMAN. Mr. McNamara?

Mr. MCNAMARA. I believe he's a lawyer here in town, Sir.

The CHAIRMAN. Do you know who, if anybody, he represented in connection with this matter?

Mr. MCNAMARA. No, sir.

The CHAIRMAN. Do you know, Mr. McHale?

Mr. MCHALE. No, sir.

The CHAIRMAN. Mr. Schmalzbach?

Mr. SCHMALZBACH. The only Bill Taylor I know is an official with the FDIC.

The CHAIRMAN. Mr. Knight—all right. So, would it surprise you if I told you that he represented Lisa Caputo? That is the first you ever heard, Mr. Dougherty? You did not know he represented Ms. Caputo?

Mr. DOUGHERTY. Could you rephrase the question, Mr. Chairman?

The CHAIRMAN. You were not aware of the fact that Bill Taylor represented Lisa Caputo?

Mr. DOUGHERTY. No, I was not.

The CHAIRMAN. Do you know who Lisa Caputo is?

Mr. DOUGHERTY. If I recall, Lisa Caputo is or was an Assistant to the First Lady.

The CHAIRMAN. Press Secretary.

Mr. DOUGHERTY. I don't know in what capacity she served the First Lady, sir.

The CHAIRMAN. I see comments, "RTC will not release," and I think, Mr. Dougherty, that is transcripts, "before tomorrow." This is written on July 27, "but I am able to send you this IG summary for you and Pat to see, but not public." Then we look at the next several pages, and we see Steve Katsanos, July 6. He indeed was examined by the RTC people on July 6, and we see his 2-page summary, and July 13, when he was examined again, Mr. Katsanos. Then we find—those are the 4 pages—in addition to the documents that are sent over to us, a note. See that note.

Jane, re: issue of whether we gave the IG transcripts to witnesses, please recall that I have faxed a 3-page summary of Katsanos' transcript to Caputo's lawyer.

So I think reasonably we could infer that those are the pages of Mr. Katsanos' summary? Would you Mr. Knight, as a lawyer, not say that's a reasonable interpretation?

Mr. KNIGHT. Yes, sir.

The CHAIRMAN. Mr. Schmalzbach?

Mr. SCHMALZBACH. Yes, sir.

The CHAIRMAN. Mr. McHale?

Mr. MCHALE. Yes, sir.

The CHAIRMAN. Mr. McNamara?

Mr. MCNAMARA. Yes, sir.

The CHAIRMAN. Mr. Dougherty?

Mr. DOUGHERTY. I think it's reasonable.

The CHAIRMAN. It goes on, "I do not believe the lawyer showed it to Caputo." It's going to be interesting to ascertain why she does not believe that. She sent it to him, her counsel. Look at the rest, "but do not know for sure. We should discuss." And it's initialed S, Sharon, obviously, Conaway, who works for Ms. Sherburne in the Counsel's Office. Now, do you find that troubling?

Mr. DOUGHERTY. No, sir.

The CHAIRMAN. No? So we should send the IG's reports, the summaries, to the counsels for potential witnesses? First Ladies, press secretaries, we send her the summary of people who have given testimony about their conversations with Ms. Caputo, that is the usual practice in an IG's investigation? You see nothing unusual about that?

Mr. DOUGHERTY. I believe there are two questions there. One, I see nothing unusual about her statement. As to whether, in fact, that occurred, whether that is an unusual occurrence, I don't know. I've never been involved in an IG investigation.

The CHAIRMAN. Mr. Knight, what would you say?

Mr. KNIGHT. What's the date of this document?

The CHAIRMAN. It's dated the 27th, the first transmission, but the note is obviously written after the transmission and, "I do not believe that the lawyer showed it to Caputo, but do not know for sure. We should discuss." Do you think the transmission of this summary did not break the agreement whereby the Secretary indicated that this should not be shared?

Mr. KNIGHT. Mr. Chairman, this is the first time I've seen these documents. I want to be careful. I would like to study them more.

The CHAIRMAN. You understand the letter that accompanied—or the Secretary's warning that this information could be sent to Mr. Cutler—transcripts and summaries—but not be made available to others?

Mr. KNIGHT. I understand.

The CHAIRMAN. Wouldn't this clearly be a violation of that?

Mr. KNIGHT. It certainly seems inconsistent with the spirit of it, but I would like to study it as I have not seen these documents before.

The CHAIRMAN. I am not going to get any more from you, Mr. Knight, but at least I thank you for that response.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Dougherty, I want to ask you point-blank: Did you send over these transcripts to Ms. Conaway, I mean these summaries?

Mr. DOUGHERTY. I have no recollection of doing so, sir.

Mr. CHERTOFF. Did you later call her up and apologize and say they should be taken back?

Mr. DOUGHERTY. I have no recollection of doing that, sir.

Mr. CHERTOFF. Did you tell Ms. Conaway or anyone at the White House they could make unrestricted use of the summaries?

Mr. DOUGHERTY. I have no recollection of doing that, sir.

Mr. CHERTOFF. Mr. McNamara, I would like to show you a letter of yours dated October 26. It's Bates numbered 10787 to Bill Codinha, who at that time was the Special Counsel on the then-Majority side of the Banking Committee regarding Whitewater.

Mr. MCNAMARA. I have a copy.

Mr. CHERTOFF. You have it?

Mr. MCNAMARA. Yes, sir.

Mr. CHERTOFF. It says in the next to last paragraph that it's a response to a question raised by Senator Shelby. The second item is a question by Senator Shelby contained on page 71 of the transcript regarding the date on which former White House Counsel Lloyd Cutler asked for copies of the transcripts of interviews taken by the Treasury Inspector General. "The answer to"—now, remember the question is the date on which former White House Counsel asked for copies of the transcripts. "The answer to this question is the following: 'Mr. Cutler's request was first made on July 5, 1994, and renewed late in July.'"

How did you go about answering that question?

Mr. MCNAMARA. I don't recall.

Mr. CHERTOFF. Do you know that Mr. Cutler testified under oath that as of July 1 he already had a deal to get the transcripts?

Mr. MCNAMARA. I understand that's the case, but I haven't seen that deposition.

Mr. CHERTOFF. Do you know that Mr. Cutler testified he had spoken to Mr. Bentsen and perhaps Mr. Knight before July 1 about getting the transcripts?

Mr. MCNAMARA. I don't know that personally, sir.

Mr. CHERTOFF. Well, what did you do—I mean, you're answering a question from a Senator. What did you do to get the answer to this?

Mr. MCNAMARA. I don't remember. I do remember answering—sending this letter on October 26, 1994, which is about 3 months after the hearings had taken place. Mr. Codinha had written to me, since I was the point of contact both for the House and Senate senior staff, to get information and documents and assist them. Senator Shelby had asked the question. To the best of my knowledge, I went and found the information.

When I was shown this last week as part of my deposition, I recalled the letter but could not at all recall what I did. I said under oath that the information I provided at that time to Mr. Codinha was, to the best of my knowledge, the correct information. I still believe that to be true, sir.

Mr. CHERTOFF. You believe Mr. Cutler is in error in his recollection that before July 1 he had had conversations with the Secretary and/or Mr. Knight about getting these things?

Mr. MCNAMARA. I don't have an opinion on that.

Mr. CHERTOFF. Mr. Knight, did you see this letter before it went out?

Mr. KNIGHT. No, I don't believe I did. I just don't recall it.

Mr. CHERTOFF. Did Mr. McNamara show it to you?

Mr. KNIGHT. As I said, I just don't recall it.

Mr. CHERTOFF. I want to just remind myself, you acknowledged talking to Mr. Cutler in July, but you say you talked to Mr. Cutler only about getting documents and giving documents; right?

Mr. KNIGHT. My most extensive discussions with Mr. Cutler were not on the deposition issue. They were on the original sharing of documents as the inquiry began in May. After that period, I did not have much contact with him. The only contact I recall was around July 5 or 6 in that area when I went over and took over the sensitive documents for him to view.

Mr. CHERTOFF. Then your testimony is the next time you talked to him about this had to do with July 22, when he made that call requesting the transcript?

Mr. KNIGHT. No, I didn't talk to him then. I got the information from elsewhere that the IG's Office wanted the Secretary's opinion as to whether the transcript should be shared.

Mr. CHERTOFF. You got back from Naples on July 14?

Mr. KNIGHT. I think it was, yes.

Mr. CHERTOFF. The next day you called Mr. Cutler, do you remember that?

Mr. KNIGHT. No.

Mr. CHERTOFF. On the following Monday, Mr. Cutler left word for you and you talked. Do you remember that?

Mr. KNIGHT. No, I think you're reading from logs that have yet to be identified to me as to where they came from in terms of whether they are Mr. Cutler's logs or Mr. Klein's.

Mr. CHERTOFF. They appear to be logs from the Office of Special Counsel to the President and they appear to be logs of Mr. Cutler's phone contacts. I'll give it to you. It's S 7922.

Mr. KNIGHT. Yes, I have seen them. My only recollection is, Mr. Chertoff, that Mr. Klein had a similar request to Mr. Cutler's in that we provided him with similar access.

Mr. CHERTOFF. To transcripts?

Mr. KNIGHT. No, not to transcripts, to the sensitive documents.

Mr. CHERTOFF. This is the Joel Klein whose name came up in the note that was put up on the Elmo yesterday back in March 1994 saying in response to the beginning of this investigation that this should cover us. Is that the same Joel Klein?

Mr. KNIGHT. I assume so. I just didn't follow that part.

Mr. CHERTOFF. Now, the White House identified—I will give you the phone lists that show calls on July 15, on July 18, on July 20, on July 21, and on July 22. The White House identified to us that these documents are Mr. Cutler's phone logs.

Mr. KNIGHT. There are two factors I think you need to keep in mind. One is as an attorney who has made a career in Washington, I believe a phone call from the Counsel to the President is a very important occurrence. I remember those. I do not remember talking to Mr. Cutler at this period. In fact, I have the opposite recollection. Two, I had other responsibilities, though, beyond this. I could have called Counsel's Office. As to their practice in terms of keeping messages and whether those are Joel Klein's messages is a separate question, and I think those records only show that I talked to someone in that office on two occasions in the month of July.

Mr. CHERTOFF. All I can tell you is the White House has told us these are Mr. Cutler's phone logs, so I guess you dispute that and you dispute Mr. Cutler's own testimony repeatedly——

Mr. KNIGHT. Mr. Chertoff, I had other responsibilities beyond this. I was coordinating the Administration's outreach efforts on

the GATT negotiations. I was Executive Secretary and Senior Advisor to the Secretary of the Treasury. He had other responsibilities. I had other occasions to call that office. I have no recollection of talking to the Counsel to the President on those dates——

Mr. CHERTOFF. All right. Let me ask you——

Mr. KNIGHT. —on this subject.

Mr. CHERTOFF. If I'm over my time, why don't——

The CHAIRMAN. Senator Sarbanes, Mr. Ben-Veniste.

Senator SARBANES. Gentlemen, let me set a couple of things straight here in the record because, first of all, a lot of this questioning doesn't seem to me it matters. In the end, the depositions were furnished in a certain way, handled in a certain way, inquiries were made. Everyone of you, I think, testified that you thought the inquiry and the report of the OGE were thorough, complete, and professional; is that correct?

Mr. SCHMALZBACH. Yes, sir.

Mr. KNIGHT. That's correct.

Mr. MCHALE. Yes.

Mr. MCNAMARA. Yes, sir.

Mr. DOUGHERTY. Yes, sir.

Senator SARBANES. Mr. McNamara, I don't think it's relevant to any issue other than it makes it appear as though you're saying one thing, Mr. Cutler is saying another thing and therefore somehow that's supposed to create some doubt of some sort.

Mr. Cutler's deposition, when they were asking about this, getting the deposition, says—the question was, "Let me say as of July 1, then, when Mr. Fiske—" and Mr. Cutler says, "As of July 1, yes, without being pinned down to the precise date."

Question: I want to pin it down in this sense. On July 1 you understood that the White House had the green light from Mr. Fiske to conduct its interviewing; correct? The White House had been precluded up to that point.

Answer: Yes.

Question: And as of that point, was it your understanding that you had a commitment from the Treasury Department to furnish the White House, you and your staff, with transcripts of all of the depositions taken by the Inspector Generals of every witness?

Answer: I cannot answer that question precisely.

Question: But as of July 1 did you understand you were to receive all the transcripts?

Answer: I cannot be precise as to whether it was as of July 1 or as of July 5 but——

Mr. MCNAMARA. That's correct, sir.

Senator SARBANES. —"it was about that time." That's Mr. Cutler's answer. "I cannot be precise as to whether it was as of July 1 or as of July 5, but it was about that time." Your answer was July 5 in your letter, as I understand it.

Mr. MCNAMARA. Yes, Senator. It's also the answer in Mr. Cutler's letter. If you look at S. 2129, Mr. Cutler says the same thing, "It was July 5 that the Office of the White House Counsel first made the request to Treasury."

Mr. BEN-VENISTE. Right.

Senator SARBANES. I think it's important to establish that. Mr. Dougherty, let me ask you, when you took the transcripts over to deliver them, that was on July 23?

Mr. DOUGHERTY. Yes, Senator.

Senator SARBANES. Did you go into the Executive Office Building?

Mr. DOUGHERTY. I went into the lobby on the outside, that is the public side of the security and check-in area. The person with whom I made the arrangements, she and I determined that it would be easier and quicker if she came down from her office and met me on the outside—not the outside of the building, mind you, but the outside of the gate, inside the building.

Senator SARBANES. Outside the security?

Mr. DOUGHERTY. Outside security so that I didn't, in fact—otherwise, I would have had to have been cleared in advance. So she came out. I came into the building and a few minutes later, maybe 1 minute later, she came out of the elevator lobby, across security, picked up the box, put it on the conveyor belt and went back inside again.

Senator SARBANES. We have logs from the security at the EOB which indicate on July 23 at 6:54:12 p.m., Sheila Cheston exited, and that at 6:55:35 p.m., a minute and 20 seconds later, she entered. Now, as I understand it, you indicated earlier that you thought you gave us two names, but one of them was—Sheila Cheston was the person to whom you thought you had delivered these transcripts; is that correct?

Mr. DOUGHERTY. That's correct, Senator.

Senator SARBANES. Does this time period correspond with what you just outlined for me without me having indicated the time period as to how long you spent doing this. A minute and 20 seconds, you just conveyed the box, or whatever it was, over and left; is that right?

Mr. DOUGHERTY. That's correct.

Senator SARBANES. So this would correspond, then, with your account of that transfer; is that correct?

Mr. DOUGHERTY. Absolutely, Senator.

Senator SARBANES. This was just shy of 7 p.m. on July 23?

Mr. DOUGHERTY. That's correct, and that accounts with my recollection of what time I went over.

Senator SARBANES. All right. Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the transmittal of the summary——

Senator SARBANES. Let me just add, I don't think it matters in the total picture very much, but I think in any event, since you were subjected to a lot of questioning on that point, we ought to try to pin it down, and this seems to me to pin it down about as well as it can be pinned down.

Mr. BEN-VENISTE. Now, because we have produced—have had produced from the White House a memorandum from one White House Counsel lawyer to another, we know that a transcript—or a summary of a transcript relating to Mr. Katsanos was sent to the attorney for Lisa Caputo. That was Bill Taylor. I know Bill Taylor. He is a very fine trial lawyer here in town, and I can assure you that his ego will withstand the lack of name recognition displayed here today.

But as a result of having all of that information, we know two things: We know that in response to an obvious inquiry about what went out from the White House, the response was that one sum-

mary went out and, presumably, the person who sent that summary out responded back to Ms. Sherburne that she had sent the summary out and that it is her belief that it wasn't even shown to the witness but rather shown to the attorney.

When we look at the summary itself, again, looking at the big picture, it seems totally innocuous and irrelevant to the issues that were foremost on the minds of those who conducted the hearings last year. To go a step further, it does not appear that Ms. Caputo was even called. I think it's clear that she was not called as a witness here. So can any of you, using your most creative skills, think of any way in which the summary of Mr. Katsanos' testimony provided to Ms. Caputo's attorney could have somehow skewed or affected or impeded or obstructed your investigation?

Mr. KNIGHT. No.

Mr. MCHALE. No, sir.

Mr. SCHMALZBACH. No, sir.

Mr. MCNAMARA. No, sir.

Mr. DOUGHERTY. No, sir.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. I am continually amazed. Nobody remembers anything when it comes to who gave transcripts out. Mr. Dougherty, I have to tell you when I read this memo—and I am going to refer you to that memo entitled S 007913. Put it up on the Elmo. Do you see that? This obviously comes from Sharon Conaway. In the second paragraph she says, "David Dougherty at Treasury told me that RTC had not yet agreed to release its transcripts." Now, do you remember telling her that, yes or no? Do you remember telling her that?

Mr. DOUGHERTY. No, sir, I don't remember those exact words.

The CHAIRMAN. OK. Then I guess that she was wrong. "But they may do so tomorrow."

Mr. DOUGHERTY. No, Senator, I don't remember saying that.

The CHAIRMAN. Let's go on. "He said they seem very touchy about the transcripts." I mean, you're telling me here that a Counsel at the White House talked to you, you're the contact person, and you don't remember her having this conversation and you saying to her that they're touchy about these transcripts and they express dismay that Treasury had given them to the White House? Do you remember anybody telling you from the RTC that they were upset about this?

Mr. DOUGHERTY. No, Senator. I do know that I heard that from either Mr. McHale or Mr. Schmalzbach that there was some concern on the part of the RTC about the transcripts. I do recall telling someone on the telephone, someone from White House Counsel on the telephone who called to speak not to me—I want to clarify that one thing. I was not the point of contact. I was the junior member of the team. The only time I had contact with anybody on the White House Counsel's staff was when they were unable to reach a senior person who was involved in making decisions. I made no decisions about these things, simply passed information along.

The CHAIRMAN. You do recall a phone conversation right now with someone from the Counsel's Office?

Mr. DOUGHERTY. That's correct, Senator.

The CHAIRMAN. And in that conversation, you made known—"He stressed that it is important that nothing in the transcripts be made public." I mean, is that true?

Mr. DOUGHERTY. I don't recall that conversation, Senator. The only thing I recall is the second sentence.

The CHAIRMAN. Let's go down to the last paragraph. "This afternoon, he gave me summaries of transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel." She goes on to indicate as a result of this, "I faxed the Katsanos' summary" [3 pages]—those are the pages we saw—"to Bill Taylor." He's the lawyer for Ms. Caputo. "And corrected one statement that inaccurately reflected the testimony. I told Taylor's associate of Treasury's concern about not attributing information to the transcripts." She's very precise, very precise in her statements. These are contemporaneous—these notes that she has kept with respect to your conversations with her. Now, I'm going to ask you again, you didn't send over transcripts?

Mr. DOUGHERTY. Senator, I testified that I delivered the transcripts on July 23.

The CHAIRMAN. Summaries?

Mr. DOUGHERTY. I have no recollection of ever providing any summaries to anyone.

The CHAIRMAN. She was very precise. "This afternoon, he gave me summaries of the transcripts that he had not realized we did not have." I'm going to go back to Mr. Knight. Senator Bentsen was under the impression or at least the letter authorizing the release of summaries and transcripts indicated that the information was not to be shared with anybody outside of the White House Counsel's Office; is that not correct?

Mr. KNIGHT. That's the thrust of the letter.

The CHAIRMAN. That was the restriction placed on this information. Now for people to suggest that oh, somehow it's inconsequential because one lawyer—that is the only one that we know of. This disturbs the Committee. Whenever someone is asked about who actually delivered, who authorized, who gave the release, we have a lapse of memory. I mean, even when we have your diary, you don't even know, Mr. Schmalzbach, who told you or how this came about. Rather important information.

Mr. Chertoff.

Senator SARBANES. Mr. Chairman, I assume Mr. Cutler and Ms. Sherburne——

The CHAIRMAN. Yes, but you know what, Mr. Cutler and Ms. Sherburne are going to be here tomorrow and these people are here now.

Senator SARBANES. That's true. I can't contest that.

The CHAIRMAN. I think it is incredible that Mr. Schmalzbach who is not going to be here tomorrow, nor is Mr. Dougherty—doesn't know about that statement in his diary, that important one line, doesn't know how it got there or what it referred to.

Mr. CHERTOFF. Mr. Dougherty, I want to refresh your memory more about these summaries. Isn't it a fact that what happened was that Sharon Conaway walked over and picked up the summaries from you at Treasury which you gave to her in an envelope?

Mr. DOUGHERTY. Not that I recall, sir.

Mr. CHERTOFF. The question is really this, Mr. McHale you were the person who had contact with Mr. Cesca on July 23 about getting those transcripts over. Do you recall that?

Mr. MCHALE. Yes, sir.

Mr. CHERTOFF. Did you know at the time that there was an agreement between the Secretary and Mr. Cutler that they would be delivered?

Mr. MCHALE. I do not recall being aware of that at that time.

Mr. CHERTOFF. Was it a done deal already and Mr. Cesca was just there as window dressing, but it was already in agreement? Is that what happened?

Mr. MCHALE. No, sir, I do not remember it as a done deal and Mr. Cesca was certainly not window dressing.

Mr. CHERTOFF. You had the transcripts prepared to go; right?

Mr. MCHALE. Yes, sir.

Mr. CHERTOFF. You had the cover letter typed?

Mr. MCHALE. No, sir.

Mr. CHERTOFF. No?

Mr. MCHALE. No, sir.

Mr. CHERTOFF. This is important. So you had to type the cover letter, prepare the cover letter after you had your discussion with Mr. Cesca; right?

Mr. MCHALE. Yes, sir.

Mr. CHERTOFF. In fact, that was a three-way discussion?

Mr. MCHALE. With Mr. Cesca, Ms. Kerner, and myself, yes, sir.

Mr. CHERTOFF. You had a one-on-one discussion with either Ms. Kerner or Mr. Cesca?

Mr. MCHALE. My recollection is I had a brief conversation with Mr. Cesca. I then had a brief conversation with Ms. Kerner and I had a conversation with the two of them.

Mr. CHERTOFF. Then there's the typing of the letter; right?

Mr. MCHALE. A very short letter, but yes.

Mr. CHERTOFF. In the course of the conversations, you are negotiating the terms and conditions of the letter; right?

Mr. MCHALE. I typed up the letter and I called Ms. Sherburne and I read it to her, sir. I don't think I negotiated it.

Mr. CHERTOFF. So after you had the series of calls with people at Treasury, you prepared the letter, and then you called Ms. Sherburne?

Mr. MCHALE. Yes, sir.

Mr. CHERTOFF. Mr. McNamara, didn't you see a draft of the letter before July 23?

Mr. MCNAMARA. I was asked during my deposition whether or not I had. I thought I had. I also was asked whether or not I could have seen it that day, and I said it could have been that day. I did not have any recall of exactly when. I believe the confusion was that we had discussed that there should be conditions on providing transcripts to the White House. I could have been in error.

Mr. CHERTOFF. So the question is, Mr. McHale, did those transcripts go over before you had Mr. Cesca's approval?

Mr. MCHALE. Absolutely not, sir.

Mr. CHERTOFF. If Mr. Cesca had said no, you would have withheld the transcripts?

Mr. MCHALE. I would have gone back to Mr. Knight. I would have told him what Mr. Cesca's views were and I suspect we probably would have withheld the transcripts.

Mr. CHERTOFF. Mr. Knight, what was your understanding on Saturday? Did the Secretary tell you, as he told us, that it was a done deal?

Mr. KNIGHT. I don't think the Secretary used those words. My reading of the Secretary's testimony yesterday is that he had a meeting of the minds with Lloyd Cutler that they should be shared, but when I asked his opinion is when he made it aware to me that that was his opinion.

Mr. CHERTOFF. Now, finally, let me ask all of you this. We have these summaries, at least one of which appears to have gotten out—we know has gotten out to one of the lawyers for the witnesses. We don't know where all the other summaries went, who got them, how they were distributed. Does anyone here—did anyone here control the handling of the summaries? Did anyone keep track of the summaries and who had them and who they were given to? Mr. Knight, did you?

Mr. KNIGHT. No.

Mr. CHERTOFF. Mr. Schmalzbach?

Mr. SCHMALZBACH. No.

Mr. CHERTOFF. Mr. McHale?

Mr. MCHALE. The summaries were prepared under my direction. They were maintained in my office and I have no recollection of them going to the White House.

Mr. CHERTOFF. You don't know how they got there either?

Mr. MCHALE. No, I do not, sir.

Mr. CHERTOFF. Mr. McNamara?

Mr. MCNAMARA. No, sir.

Mr. CHERTOFF. Mr. Dougherty?

Mr. DOUGHERTY. No, sir.

Mr. CHERTOFF. These are orphan summaries. No one wants to take responsibility for them. No one knows how they got to the White House or where they got to. This was the confidential work product that the Inspectors General thought they were preserving as part of their investigation. Is this the way you customarily do business at the General Counsel's Office?

Mr. KNIGHT. Mr. Chertoff, I think you're aware of the way the office did business. You worked with the office and this Committee did last year. Both Committees in the House and Senate congratulated the Treasury Department and specifically singled out attorneys like Mr. McNamara for their professionalism. You wrote me a letter congratulating me and thanking me for my cooperation. These are career attorneys at the Department of the Treasury. Their specialties are ethics, criminal, and civil law. They did the best they could——

The CHAIRMAN. Mr. Knight, then how did the summaries get over to the White House? If you have something in such a sensitive, very important investigation, tell us how they got there and how you wouldn't know how they got there and how no one can offer an explanation or remember anything about it.

Mr. KNIGHT. We can only attest to what we know.

The CHAIRMAN. Please don't lecture Counsel about the professionalism of the office. He's asked in a very concrete way, how did they get there? Wouldn't it seem to you that there is something that's terribly missing if these summaries got to the White House and no one in your office responsible for them knows how they got over there and we don't know how? Why?

Mr. KNIGHT. Your question, Mr. Chairman, is what?

The CHAIRMAN. You heard my question. How can you call it a professional operation when these important summaries—contrary to the explicit directions of the Secretary—not only get to the White House, but are also shared outside of that. How did they get there? Who's responsible for sending them over?

Mr. KNIGHT. I find it very important, Mr. Chairman, that the individual who drafted the letter protecting these documents also had responsibilities for custody of these summaries and that therefore, I see no reason why we should suspect the General Counsel's Office in that regard.

Mr. McHale was being very prudent in his activities with regard to these depositions, and I don't see him engaging in a lapse or an accident in this regard. I can only say that I don't believe it was through the fault of the General Counsel's Office.

The CHAIRMAN. Do you think important documents like these would be sent without a transmittal letter? Certainly there would be some record of them being sent over? There is none?

Mr. KNIGHT. Not that I'm aware of, sir.

The CHAIRMAN. Isn't that rather unusual?

Mr. KNIGHT. Only if they came from the General Counsel's Office.

Mr. CHERTOFF. Where do you think they came from, Mr. Knight?

Mr. KNIGHT. I don't know. That's what we don't know.

The CHAIRMAN. Who had custody of them?

Mr. MCHALE. I had custody of them, Senator.

The CHAIRMAN. All right, Mr. McHale, you had custody of them. How could they get to the White House without there being some communication—you told me about a letter you typed. You remember typing a letter as it relates to something else. How did the summaries get over there?

Mr. MCHALE. Senator, I cannot——

Senator SARBANES. Senator, we don't have any evidence when you use the plural "they." We have some evidence off the basis——

The CHAIRMAN. We do.

Senator SARBANES. —of "it" but not "they."

The CHAIRMAN. We are aware of at least one—"This afternoon, he gave me summaries of the transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel."—because we actually see that summary sent out to an outside counsel outside of Government.

We have that one and we have, again, a document produced to Ms. Sherburne from the White House Counsel's Office indicating the summaries were sent over. Then when we ask Mr. Dougherty, because he's identified as the person who transferred them, he has no recollection whatsoever, and it would seem to me there should be some kind of transmittal letter. Something to the file. Do you

have anything in the file to indicate how the summaries were sent there?

Mr. MCHALE. No, Senator.

Mr. CHERTOFF. Did you know, Mr. McHale, that when you sent over the transcripts, you sent over a printout from the computer data base of Treasury with a file list listing the Madison summaries, which is 2065 given to us by the White House?

Mr. MCHALE. I have been shown that document before. It is possible that it went over with the transcripts.

Mr. CHERTOFF. Why did you send over a data base list of about 20 summaries and you don't know how the summaries got over there?

Mr. MCHALE. That is also a list—because of the list of the summaries of all the transcripts, that is a list of all the transcripts.

Mr. CHERTOFF. The White House has produced to us maybe about half an inch worth of summaries. Nobody knows how those got over there and no one can vouch for any restrictions placed on them; right? Is there anyone who can vouch for the fact that summaries turned over to the White House or held elsewhere in the General Counsel's Office at Treasury were actually held restricted from the witnesses? Is anyone prepared to do that?

Mr. MCHALE. I do not know if the summaries were shared with the witnesses.

Mr. CHERTOFF. You can't vouch one way or the other, you have no assurance; right?

Mr. MCHALE. I have no knowledge that they were shared with any witnesses.

Mr. CHERTOFF. You have no knowledge that they weren't; right?

Mr. MCHALE. To the extent that I maintained custody of them, I have no knowledge that they were shared with any witnesses.

Mr. CHERTOFF. Since you can't tell us how the summaries got to the White House, and they were in your custody, I guess that means you didn't maintain custody of them; right?

Mr. MCHALE. I have no recollection of how they got to the White House. I do not recall that they went to the White House.

The CHAIRMAN. They obviously went to the White House.

Mr. MCHALE. That's correct, Senator.

The CHAIRMAN. Now, if you say you don't know how they got there, that's all right. But then I would just simply say as the custodian of these very sensitive documents, isn't this a serious oversight? Aren't you embarrassed by that?

Mr. MCHALE. No, Mr. Chairman, I'm not embarrassed by that.

The CHAIRMAN. Really? The summaries got there and you have no record of their delivery, how they got there, but it doesn't bother you at all?

Mr. MCHALE. Mr. Chairman, during this period we were working probably 17 to 18 hours a day, day in and day out. There were many things going on. I do not presently have a recollection of the summaries going over to the White House. I am not surprised, Mr. Chairman, by that lack of recollection.

The CHAIRMAN. Do you know Sharon Conaway?

Mr. MCHALE. No, sir.

The CHAIRMAN. Does anyone here know or talk to Sharon Conaway other than Mr. Dougherty? Mr. Knight?

Mr. KNIGHT. No, sir.

Mr. SCHMALZBACH. No, sir.

The CHAIRMAN. Mr. McNamara?

Mr. MCNAMARA. No, sir.

The CHAIRMAN. Mr. Dougherty, you have spoken to her?

Mr. DOUGHERTY. I recall speaking to either Ms. Conaway or Ms. Chesterton.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. To put this in a little bit more context of what else was going on at the time, is it not the case that each individual witness who provided testimony before the RTC–Treasury IG's was provided a copy of his own transcript?

Mr. MCHALE. That's my understanding from the Inspector General's Office.

Mr. BEN-VENISTE. Was that not done as of July 18, a week before this transmittal of the transcripts?

Mr. MCHALE. My understanding is that's when it began.

Mr. BEN-VENISTE. Is it not the case that with respect to those transcripts, the individuals were encouraged to cooperate with other investigations that were then ongoing, that the witnesses whose testimony was taken, for whom transcripts of sworn testimony were made were encouraged at their depositions to cooperate with other ongoing investigations?

Mr. MCHALE. Secretary Bentsen had directed that all Treasury employees cooperate fully with the investigations. I have no specific recollection of that in the depositions.

Mr. BEN-VENISTE. Let me tell you, on the basis of having reviewed comments made at the depositions, it was uniformly the case that the witnesses were encouraged to cooperate with other ongoing investigations. So is it not fair to say that if the witnesses or their attorneys had wished to discuss the substance of the transcripts which represented their second chance at giving sworn testimony on this subject matter, they were perfectly free to do so?

Mr. MCHALE. Yes, sir.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. I know that Senator Bond wants to raise several questions, and he has just gone down to vote, and we would have nothing further, but I have to keep it open for the Senator.

Why don't we take a brief recess, go down and vote and I think we'll finish up in about 5 minutes thereafter. I think we can put over the other panel—unless you feel strongly about it, we can take them now; but otherwise, we could put them over until tomorrow afternoon.

Senator SARBANES. Are they here and waiting?

Mr. BEN-VENISTE. They are waiting.

The CHAIRMAN. We have two of them. It's up to you. I don't think they'll take long. We'll do it today. We're going to take a brief recess to vote. We'll be back. I don't think that this panel—we won't hold you for more than another 10 minutes at the most after we come back from the recess, and we'll go right into the last panel. So we stand in recess.

[Recess.]

The CHAIRMAN. I would like to thank the witnesses for returning. I'll turn to Senator Bond.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

Gentlemen, I appreciate the opportunity to ask you about some questions I asked for the record last fall. Former Secretary Bentsen was here yesterday and, in essence, said he had not prepared the responses, had not—was not familiar with them.

He indicated that somewhere they were prepared in the White House. I'd like to know who participated in drafting the responses to my questions to Secretary Bentsen. Did you Mr. Knight?

Senator SARBANES. Would you yield for a minute? You said the prepared summary at the White House.

Senator BOND. At the Treasury. Excuse me. It was prepared—a Freudian slip, my apologies. I meant to say Treasury.

Mr. KNIGHT. Is there a cover letter to this?

Senator BOND. There is an October 21 cover memorandum. I have No. 296 on it, Edward S. Knight—from Edward S. Knight to Michael B. Levy. It says:

> Dennis Foreman and my answers are based on our personal knowledge. The questions addressed to the Secretary have been answered on behalf of the Department.

Mr. KNIGHT. Senator, I believe they were answered by my office.

Senator BOND. Not by you?

Mr. KNIGHT. I participated. OK, now we have it. As I believe it was pointed out yesterday, the questions were quite diverse, and we had to solicit answers from different places, but I was at that point General Counsel and my office coordinated the response on behalf of the Department.

Senator BOND. Did any of the others participate in the drafting of the response? Mr. Schmalzbach?

Mr. SCHMALZBACH. Yes, Senator.

Mr. MCHALE. Yes, Senator.

Senator BOND. Mr. McNamara?

Mr. MCNAMARA. Senator Bond, I reviewed them. I don't believe I drafted the answers but I could be mistaken.

Senator BOND. Mr. Dougherty?

Mr. DOUGHERTY. I'm sorry, Senator, could you state the question for me again?

Senator BOND. Did you participate in preparing the answers to the questions I asked?

Mr. DOUGHERTY. No, Senator, no, I did not.

Senator BOND. Who signed off on the final report? Who was responsible for the report? Who do we look to as the authority that these are an accurate representation of what occurred in the Department of the Treasury in regards to the questions I asked? Is that you, Mr. Knight?

Mr. KNIGHT. Senator, my office coordinated the response. Do I have personal knowledge about the answers to each of these questions? No, but I had the responsibility on behalf of the Department to get answers to your questions.

Senator BOND. Do you take responsibility for any omissions or misstatements or inaccuracies in them?

Mr. KNIGHT. These were answers we gave to the best of our ability at the time. I don't believe there are any mistakes or inaccuracies in them, Senator.

Senator BOND. Oh, really? Let me go through just a couple of them. Question No. 5 is: Why did non-Inspector General personnel communicate with the White House about the release of the transcript? The answer to this is: The Treasury officials who communicated with the White House regarding release of transcripts were responding to White House requests.

Is that the only reason that's needed? That's why you communicated about the release of the transcript? They asked you for it?

Mr. KNIGHT. I think that is an accurate answer to the question of why non-Inspector General personnel communicated with the White House. They were responding to inquiries from the White House in this subject area. They were not initiating those discussions.

Senator BOND. In the communications, did you not take any responsibility for the propriety of—ascertaining the propriety of turning over the transcripts?

Mr. KNIGHT. I don't believe that's the question. If you're referring to question 5——

Senator BOND. Question 5, does that not potentially require the description of the communications?

Mr. KNIGHT. Senator, at the time, that appeared to be a complete answer. These were written questions. We didn't have the benefit of a dialog with you on these. We were doing the best we could.

Senator BOND. Now, No. 5, "Why did non-Inspector General personnel"—No. 6—"Did any Treasury personnel consult with RTC personnel about the propriety of releasing the Treasury–RTC depositions before the Treasury–RTC depositions were released to the White House. If not, why not?

It seems to me that there were a number of people involved in that process who were aware of the July 5 meeting, were they not? There was a July 5 meeting. I believe Ms. Black stated that Ms. Kerner was involved in that meeting.

Mr. KNIGHT. You're asking about question 6 now, Senator? I just want to be careful.

Senator BOND. Yes.

Mr. KNIGHT. I do not believe that question was asked in the context of question 6. It may have been something you intended for us to answer, but again, we were trying to respond to written questions.

Senator BOND. Did any Treasury personnel consult with RTC personnel about the propriety of releasing the Treasury–RTC depositions?

Mr. KNIGHT. It says here, "The first disclosure of transcripts to the White House personnel was made jointly by the Treasury and RTC Inspector Generals' offices."

Senator BOND. I know that's an answer. I want to get around to that because that one is not right either, apparently. But was Ms. Kerner a member of the Treasury?

Mr. KNIGHT. Yes.

Senator BOND. She is not a member of the Office of the General Counsel?

Mr. KNIGHT. She was at that time, I believe, still Counsel to the Inspector General.

Senator BOND. Was she not also—was she also in the General Counsel's Office at the Treasury?

Mr. KNIGHT. Yes, she was. She's part of the General Counsel's Office.

Senator BOND. Were you aware, or were any of you aware that at that meeting, the RTC had registered its very strong objection to releasing the transcripts?

Mr. MCNAMARA. Senator, I did not find out about the meeting until yesterday when I heard the testimony, and we were not part of that meeting.

Senator BOND. Mr. McHale, were you aware of the objection to the RTC?

Mr. MCHALE. No, Senator.

Senator BOND. Mr. Schmalzbach, were you aware?

Mr. SCHMALZBACH. No, Senator.

Senator BOND. Mr. Knight, you had never heard of the objections raised by the RTC Inspector General?

Mr. KNIGHT. No. My understanding was the RTC Inspector General, along with the Inspector General at Treasury, had consented to their release.

Senator BOND. Who told you that?

Mr. KNIGHT. My colleagues in the General Counsel's Office.

Senator BOND. Could you be more specific?

Mr. KNIGHT. Sir, I just don't recall who conveyed that.

Senator BOND. The answer to the question that the first disclosure of the transcripts was on July 18 is not accurate, is it?

Mr. KNIGHT. On July 18, the individual—as I read the answer here, the individual witnesses were given copies of their depositions.

Senator BOND. "The first disclosure of transcripts to White House personnel was made"——

Mr. KNIGHT. After the IG did their interviews, my understanding is that the process was, starting on July 18, that the individuals who were deposed were allowed to view their own deposition. That is what that refers to.

Senator BOND. They did not review any other depositions other than their own depositions?

Mr. KNIGHT. No, sir, not to my knowledge.

Senator BOND. Let me ask you just one final question. At the end of answer No. 6, there are six bullet points. In that third one, it says, "Given that the interviews addressing Treasury–White House contacts had already taken place, no new information concerning RTC matters was imparted to the White House." Mr. Knight, on what basis did you say that?

Mr. KNIGHT. I think I would refer you to the discussion that was held earlier today about the fact that the information we had been told that was in these transcripts was already publicly disclosed in the press.

Senator BOND. The nonredacted material?

Mr. KNIGHT. Right, the press had the redacted material.

Senator BOND. Your contention is it was all available in the press? Had you seen it in the press at the time——

Mr. KNIGHT. I personally hadn't.

Senator BOND. Who told you it had been?

Mr. KNIGHT. Attorneys that I had worked with in the General Counsel's Office. I relied upon my staff who looked into this matter.

Senator BOND. Well, I'd just say, finally, when I asked to provide the dates that all depositions or selected depositions were made available to persons other than the deponent or Treasury–RTC investigative staff, as far as I can tell, you never really got around to answering that one. Why not?

Mr. KNIGHT. I think at the end there, it says, "Accordingly, it was not until July 26 after the Treasury and RTC, Inspectors General had completed all of their witness interviews and the staff of the Senate Banking Committee had completed their depositions that counsel for all Treasury witnesses were permitted to have access to transcripts of all Treasury and White House witness depositions including that of Ms. Hanson."

Senator BOND. Well, Mr. Chairman, that's all the questions I have. I don't think we're learning much.

The CHAIRMAN. Senator Sarbanes. Do you have anything? We have no further questions at this time.

I will re-emphasize that I find, Mr. Dougherty, in view of the depositions and the notes, certainly the notes provided to this Committee from the White House, it is very difficult to understand how it is that the transmittal of summaries of the transcripts, which again, this attorney, Sharon Conaway, says very explicitly that you delivered and in addition to that, you gave her certain indications that the RTC was upset. I have a difficult time understanding how it is—recognizing that transcripts did get over there—that you would not recall this significant event. Other events, I can understand. Dates, mixing them up, you can ask me what did I do 2 nights ago, I would probably have difficulty telling you. But that kind of thing troubles me, and I want you to know that. I thank all the witnesses.

Mr. DOBROVIR. Senator, I want to say for the record that Mr. Dougherty has answered every question honestly, to the best of his ability and to the best of his recollection, having worked with me over a period of hours yesterday, which was all the time he had to prepare.

The CHAIRMAN. Thank you, Counselor. Thank you.

We're going to ask the next panel to come on up, and we'll swear them in and see if we can't move the process as quickly as possible.

[Whereupon, Stephen Potts, and Jane Ley, were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Mr. Potts, I know that you have a long opening statement and I will, if the rest of the Committee agrees, accept the statement as if read in its entirety, and it will be placed into the record. If there is any other observation you would like to make, you may do so. Do you have copies of that statement? If you want, that's fine. OK, Mr. Potts, why don't you give your statement.

SWORN TESTIMONY OF STEPHEN D. POTTS
DIRECTOR, U.S. OFFICE OF GOVERNMENT ETHICS

Mr. POTTS. Actually, I will not read the entire statement. I have a brief summary of a few points I felt might bear emphasis.

The CHAIRMAN. We appreciate it very much.

Mr. POTTS. Right. Really it is just to make the point, to put this all into context as we answer questions, that OGE, the Office of Government Ethics, is a small agency within the Executive Branch, and our primary role is to develop ethics policies and provide advice and educational services to agencies and Federal employees. The best description of our role that I can think of is that OGE provides standards of conduct and conflict of interest support services to the men and women who are employed in the Executive Branch and to the agencies that employ them.

OGE is not an investigative agency, nor do we generally become involved in enforcement of rules in individual conduct matters. Each employing agency is responsible for the conduct of its own employees.

Just as in private industry, Government managers must assume that responsibility for the employees they supervise. Upon request, OGE does advise Inspectors General who are conducting administrative investigations of possible employee misconduct, and also agencies who are seeking to determine the proper application of our rules to the facts presented.

In this particular instance, Secretary Bentsen directly asked the Office of Government Ethics for our views on whether any ethics or conflict questions were raised by the contacts between employees of Treasury and White House officials concerning the Resolution Trust Company's resolution of Madison Guaranty Savings & Loan Association. I wrote to Secretary Bentsen and stated that we were not an investigatory agency but that we would be happy to work with the Inspectors General of the Treasury and the RTC in any investigation they might conduct.

I agreed that the Office of Government Ethics would review any report issued by those two offices and then provide him with whatever advice that I believed appropriate under the circumstances. I advised the Secretary that it was his responsibility to make any necessary determinations.

We then proceeded to work with the Inspectors General of Treasury and RTC very closely. On July 30, 1994, we provided Secretary Bentsen with our analysis. The Department of the Treasury publicly released our letter and the underlying Inspector General report on July 31, 1994.

Senator, that concludes my statement, and of course, we are here to answer any questions that you or the other panel members may have.

The CHAIRMAN. Thank you very much, Mr. Potts.

Ms. Ley, if you have any statements you would like to make.

SWORN TESTIMONY OF JANE LEY, DEPUTY GENERAL COUNSEL, U.S. OFFICE OF GOVERNMENT ETHICS

Ms. LEY. No, I have none.

The CHAIRMAN. Mr. Guiffra.

Mr. GIUFFRA. Mr. Potts, was Secretary Bentsen's request unusual?

Mr. POTTS. Yes, it was.

Mr. GIUFFRA. Did it come as a, quote unquote, big surprise to you?

Mr. POTTS. It was a surprise.

Mr. GIUFFRA. Now, you advised Secretary Bentsen that you would not do a factual investigation and it ultimately came about that you would rely upon the work of the two IG's, RTC and Treasury; is that correct?

Mr. POTTS. That's correct.

Mr. GIUFFRA. You understood that Secretary Bentsen wanted an independent investigation done; is that right?

Mr. POTTS. Yes, absolutely.

Mr. GIUFFRA. It would be correct to say that it wouldn't be an independent investigation if the investigation was conducted by the Office of the General Counsel at Treasury?

Mr. POTTS. No. Our expectation was that it was going to be done by the Inspectors General of Treasury and RTC.

Mr. GIUFFRA. But one of the subjects of the investigation was the General Counsel of the Treasury Department, Ms. Hanson?

Mr. POTTS. That's correct.

Mr. GIUFFRA. So obviously her office could not conduct that investigation?

Mr. POTTS. Right.

Mr. GIUFFRA. You analyzed the facts that were developed by the two IG's?

Mr. POTTS. Correct.

Mr. GIUFFRA. If in some way the investigation that was conducted by the two IG's was flawed, your analysis would have been based on incorrect or flawed facts?

Mr. POTTS. To the extent that the flawed facts were relevant to our analysis, that's correct.

Mr. GIUFFRA. So that if they missed something in the course of their investigation, that would have affected your analysis?

Mr. POTTS. If it was relevant material to the particular analysis of the standards of conduct.

Mr. GIUFFRA. Now, sir, do you know whether the Treasury–RTC IG investigations were based in any way on tailored testimony?

Mr. POTTS. Not to my knowledge. I personally read all the transcripts and did not receive any impression from reading the transcripts that anything was untoward.

Mr. GIUFFRA. But you don't know for certain whether, for example, the witnesses might have read each other's depositions?

Mr. POTTS. That's correct.

Mr. GIUFFRA. You just testified that your report, which I believe was issued on July 30, was intended to allow the Secretary to make decisions about the propriety of the conduct with regard to White House–Treasury contacts?

Mr. POTTS. That's correct.

Mr. GIUFFRA. Now, you did not make any specific factual findings in your report?

Mr. POTTS. No, we relied on the factual development of the record, particularly the transcripts that we had been provided, based on the IG's investigations. That was the factual predicate for our analysis of whether the standards of conduct had been violated.

Mr. GIUFFRA. Your report was quite careful to focus on the standards of conduct?

Mr. POTTS. It actually is limited to what our jurisdiction is, which would, in this connection, be the standards of conduct, not any criminal statute or regulation of Treasury or RTC, or anything of that sort.

Mr. GIUFFRA. In fact, you indicated at page 2 of your report: "That the standards are not a yardstick by which all governmental action can be measured?"

Mr. POTTS. Correct.

Mr. GIUFFRA. In fact, your report states further that, "ethics in its true sense is a far more expansive concept than stated in the standards," that you examined, that you based your analysis on.

Mr. POTTS. Right. Our standards of conduct do not purport to be a complete A to Z statement of what is ethical conduct.

Mr. GIUFFRA. Your report of July 30 did not expressly vindicate the conduct of any Treasury employee?

Mr. POTTS. Our finding—and it was really not a finding—our analysis of the facts did not reveal to us that 3 of the Treasury employees had violated the standards of conduct but that a fourth had. But he was no longer with Treasury, and therefore it was beyond the reach of any administrative sanction.

Mr. GIUFFRA. But you did state at page 3 of your report, that many of the contacts were, quote, unquote, "troubling."

Mr. POTTS. Right.

Mr. GIUFFRA. Your report did not render any advice or analysis with regard to the conduct of White House employees; is that correct?

Mr. POTTS. That's correct.

Mr. GIUFFRA. You expressly stated that, I believe it was at page 2 of your report.

Mr. POTTS. I don't remember the page, but that is correct. We did not purport to give any advice to Secretary Bentsen about the conduct of officials at the White House.

Mr. GIUFFRA. Did there come a time when you provided any advice to Special Counsel to the President, Cutler, with regard to the propriety of the conduct of White House employees?

Mr. POTTS. I did not.

Mr. GIUFFRA. Now, you had several meetings with Mr. Cutler during this period; am I correct?

Mr. POTTS. I had two meetings in person. As I recall, one was on June 20 and another one on July 11. One of those had to do with the propriety of the contacts; the other one did not, it was a subject unrelated to the matter under investigation.

Mr. GIUFFRA. I believe at your deposition you testified that, when you met with Mr. Cutler on July 11, he had initiated that meeting.

Mr. POTTS. That's correct.

Mr. GIUFFRA. At this meeting on July 11, did Mr. Cutler advise you that the White House was conducting its own internal review of Treasury–White House contacts?

Mr. POTTS. I don't recall that he did. My recollection of that meeting is it was about the process that was going to be undertaken. We were explaining that the investigation was going to be conducted by the two IG's and that we would then take their report and the transcripts and the underlying material and base our anal-

ysis of those facts in determining whether we perceived that there were any violations of the standards of conduct.

Mr. GIUFFRA. Now, do you recall Mr. Cutler asking you to attend a second meeting on July 21?

Mr. POTTS. He did, over the telephone. He asked me to attend a meeting, yes.

Mr. GIUFFRA. During that telephone conversation, did Mr. Cutler indicate to you that he thought that OGE would, quote, unquote, benefit from "hearing" what work the White House had done in the course of its internal investigation?

Mr. POTTS. Yes, he did.

Mr. GIUFFRA. Initially you indicated that you thought perhaps it might not be a good idea to meet with Mr. Cutler?

Mr. POTTS. That's correct.

Mr. GIUFFRA. Ultimately you changed your mind and decided to meet with Mr. Cutler?

Mr. POTTS. No, I did not meet with him. Actually two of my staff members. I decided it would not be a good idea for me to personally meet. So I did not meet with him.

Mr. GIUFFRA. Why did you not believe it was a good idea for you to personally meet with Mr. Cutler?

Mr. POTTS. Simply because I wanted to maintain both the fact and appearance of our independence, and mine specifically, in performing the analysis of the facts and the advice that we were going to give to Secretary Bentsen.

Mr. GIUFFRA. Now, did the Office of Government Ethics approve the results of Mr. Cutler's internal review in any way?

Mr. POTTS. No, not at all.

Mr. GIUFFRA. Did you pass judgment on Mr. Cutler's review in any way?

Mr. POTTS. No. In fact, up until that—I think it was on—July 21 was the first time that I knew that they were conducting what you would describe as an investigation rather than merely closely monitoring and following what was going on.

Mr. GIUFFRA. Mr. Cutler was not an independent, statutory Inspector General; correct?

Mr. POTTS. Of course not, no. He was Counsel to the President.

Mr. GIUFFRA. He served at the pleasure of the President?

Mr. POTTS. Right.

Mr. GIUFFRA. You were aware that members of the White House Counsel's Office were involved in the investigation?

Mr. POTTS. Correct.

Mr. GIUFFRA. Mr. Sloan and Mr. Eggleston.

Mr. POTTS. Right.

Mr. GIUFFRA. Were you aware that Mr.—strike that.

Normally an Inspector General is not situated in the office of the persons with whom he is investigating, he is typically kept in a separate location; is that your experience?

Mr. POTTS. I'm not quite sure I follow.

Mr. GIUFFRA. For example, the RTC IG is not located in the main RTC headquarters.

Mr. POTTS. I am not sure that I am aware that that's true. They are independent, but it is not clear to me that physically they are always located somewhere else.

Mr. GIUFFRA. Based on your experience, would an independent IG normally be involved in what might be described as political spin control or damage control?

Mr. POTTS. They definitely should not be.

Mr. GIUFFRA. Mr. Cutler testified before the Banking Committee that the OGE—and this is a direct quote from Mr. Cutler—had "informally concurred in Mr. Cutler's conclusion that 'no violation of any ethical standard' occurred by any White House official. He further testified in response to a question from then Ranking Member D'Amato that the OGE had approved of his use of the words 'informally concurring'." Now, did your office ever officially approve of the use of the words "informally concurring"?

Mr. POTTS. I did not.

Mr. GIUFFRA. Was that an accurate statement by Mr. Cutler as far as you are concerned?

Mr. POTTS. I did not ever review any investigation process or results conducted by the White House.

Mr. GIUFFRA. So you would——

Senator SARBANES. Can you give us a citation for what he is quoting there?

Mr. GIUFFRA. Yes, Senator. Two places, FDCH Congressional testimony, which I can provide to you.

Senator SARBANES. Is it in this hearing book?

Mr. GIUFFRA. Yes, the statement from Chairman D'Amato is at page 743 of the hearing book.

Senator SARBANES. I thought you were quoting Mr. Cutler.

Mr. GIUFFRA. I am quoting Mr. Cutler in response to a question from Chairman D'Amato.

Senator SARBANES. 743?

Mr. GIUFFRA. Yes, sir.

Now, Mr. Potts, it would be your testimony that you did not informally concur in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official in connection with these Treasury–White House contacts; is that right?

Mr. POTTS. Let me make sure I understand the timing that we are talking about. This is prior to the issuance of our report? Or something——

Mr. GIUFFRA. This would be after the issuance of your report when he testified before the Senate Banking Committee on August 5, 1994.

Mr. POTTS. Because I mean, in one sense, I don't recall doing that specifically, but of course at that point, we had issued our report and our analysis was that neither Mr. Altman or Ms. Hanson or Josh Steiner had violated the code of conduct. I gather that was the same conclusion that the White House reached.

But I don't—there was no formal review of some—I did not review some formal investigative report and analysis and conclusion of the White House and concur in it.

Mr. GIUFFRA. In fact, do you recall Mr. Cutler or anyone from his office coming to you and asking you if he could say that you informally concurred in his conclusion?

Mr. POTTS. I don't recall that. Now, you know, it is possible that someone, either Mr. Cutler or someone else, contacted someone else in my office. Maybe Ms. Ley has some recollection of that.

Mr. GIUFFRA. Ms. Ley, did Mr. Cutler or anyone from his office ask you whether the use of the words "informally concur" was OK with the Office of Government Ethics?

Ms. LEY. Not in that context but in another.

Mr. GIUFFRA. What was the context in which you were asked.

Ms. LEY. It was a discussion of the use or the application of the confidential information provision in our standards of conduct. The discussion—was the mere receipt by an individual, or could the mere receipt by an individual of confidential information, without that individual going on to use it in some way, a violation of the standards of conduct? We said no, the mere receipt would not be. They said if we said the mere receipt, would you agree to that, and we said yes. So I think in his written testimony, the formal written testimony to the House, it talks about the mere receipt of information.

Mr. GIUFFRA. Did you ever approve in any way of the use of the words "informally concurred"?

Ms. LEY. I saw drafts of his testimony prior to the time—the written parts of his testimony. It may have been in there at some point, using those two words in connection with the mere receipt of the information, and I would not have objected to it if I had seen it in that context.

Mr. GIUFFRA. Would you have objected in the context of informally concurring with his conclusion that no violation of any ethical standard had occurred by any White House officials?

Ms. LEY. That's not a correct statement of anything we did.

Mr. GIUFFRA. Mr. Potts, were you aware——

The CHAIRMAN. You are saying you did not come to that conclusion?

Ms. LEY. We didn't conclude about the conduct of the individuals—we didn't make any conclusions about the conduct of the individuals in the White House. What we discussed was if the facts are such that when you are trying to apply a standard and all you are looking at is the mere receipt of the information, can you trigger a violation of the standard. We said no, you can't.

The CHAIRMAN. So, your response is, as it relates to this one incident, that the mere receipt, and you have said it again, does not constitute a violation, but you did not come to a conclusion informally that there was no breach of ethical conduct; is that correct?

Ms. LEY. That's correct.

The CHAIRMAN. OK. That's important because repeatedly—Mr. Potts, if you were going to say something——

Mr. POTTS. I was going to say, just to make it clear, that we did not do an analysis of the conduct of the White House people. Now, we did do the analysis of the Treasury people, and that was what our report to Bentsen was about.

The CHAIRMAN. You did an analysis based upon the information that was provided to you vis-à-vis the Inspector General?

Mr. POTTS. Correct.

The CHAIRMAN. So, your conclusion is based upon their work product?

Mr. POTTS. Absolutely.

The CHAIRMAN. You had to depend upon their work product?

Mr. POTTS. That's exactly right.

The CHAIRMAN. I won't go into—because you have obviously observed some of the questions and some of the reasons that some Members are distressed at learning the manner in which this work product was put together, but I think it is important that we get on the record that it is not a conclusion based independently but rather one based upon the work product that has been given to you for your analysis.

Mr. POTTS. Right, and that that was restricted to the Treasury officials. We did not do any analysis of the conduct of White House officials as to whether or not they violated the code of conduct.

The CHAIRMAN. That is very important, very salient, because I have to tell you I was not aware of that.

Mr. GIUFFRA. Mr. Potts, were you aware that Treasury IG Counsel Francine Kerner ultimately reported to Jean Hanson, who was the subject of the investigation?

Mr. POTTS. Prior to issuing our report to Secretary Bentsen, I was personally not aware that Francine Kerner was involved in the process at all. I know my Deputy General Counsel was aware and had expressed concerns about her involvement, which led to some communications between our office and the IG's Office to spell out what her role would be and what kind of arrangements would be made to ensure that she could act on behalf of the Inspector General and not be subject to the direction of the General Counsel, Jean Hanson, who was the subject of the investigation. But I was not aware of all of that until actually after the report was issued.

Mr. GIUFFRA. Mr. Potts, were you aware that representatives of the Office of the General Counsel of the Treasury Department commented on the IG report that you based your analysis on?

Mr. POTTS. I was not at the time we issued our report.

Mr. GIUFFRA. Was that something you wouldn't expect to happen? I believe you testified that way at your deposition.

Mr. POTTS. That's correct, I would not have.

Mr. GIUFFRA. No further questions.

Mr. BEN-VENISTE. Good afternoon, Mr. Potts and Ms. Ley.

Mr. POTTS. Good afternoon.

Mr. BEN-VENISTE. When you were first asked to undertake this assignment by the Secretary of the Treasury, you learned very shortly that Independent Counsel Fiske was requesting that you defer further action on the request until he concluded his investigation; is that so?

Mr. POTTS. We actually initiated the contact with Mr. Fiske because we knew that was kind of the general protocol, when an Independent Counsel or in fact any criminal investigation was going on, that the administrative sort of investigations would be put on hold until that was completed.

Mr. BEN-VENISTE. So, the administrative or management investigation was a follow-on to the conclusion of Independent Counsel Fiske's criminal inquiry?

Mr. POTTS. Correct.

Mr. BEN-VENISTE. That criminal inquiry resulted in the conclusion by Independent Counsel Fiske that no criminal charges were warranted and none were brought?

Mr. POTTS. That's correct.

Mr. BEN-VENISTE. So that with respect to your management or administrative inquiry, if I understand correctly, since you did not have in-house at OGE people who were fact gatherers, trained investigators, you borrowed, as it were, from the RTC IG and Treasury IG such persons?

Mr. POTTS. I wouldn't quite characterize it that way. The Inspectors General did not at any time work for us. We informed Secretary Bentsen that one of the possible implications of his request to us would be that we were to investigate. So we went back to make sure that he understood that we could not be the investigators but that we would be glad to cooperate with the Inspectors General of Treasury and RTC and work with them to help shape the questions and make sure they understood what provisions of the code of conduct were potentially implicated.

Mr. BEN-VENISTE. Your point is well taken. So it was a collegial and cooperative effort; would that be a fair characterization?

Mr. POTTS. I would say that is a fair characterization.

Mr. BEN-VENISTE. Is it correct that, with respect to the witnesses who gave testimony before the RTC and Treasury Inspectors General, that it was your view that those witnesses should be provided the opportunity to review their transcripts and to take possession of those transcripts?

Mr. POTTS. I don't believe I really thought about it one way or the other, because I was really relying on the IG's, who were very experienced and professional investigators, to follow just whatever their normal procedure was in that regard.

Mr. BEN-VENISTE. Perhaps I should direct my question to Ms. Ley.

Ms. LEY. Actually, I did. I said that we did not want to work from transcripts that the individuals had not had an opportunity to look at and make any changes or any suggested changes that they wished.

Mr. BEN-VENISTE. Indeed, is it fair to say that the suggestion that the individuals be allowed to review their transcripts so that they could provide you with the most accurate and up to the minute, as it were, statement of relevant facts in those transcripts as corrected, if they needed to be corrected, was a suggestion which you made?

Ms. LEY. Yes.

Mr. BEN-VENISTE. You felt it was reasonable and indeed beneficial from your point of view for the witnesses to have copies of their depositions?

Ms. LEY. Yes.

Mr. BEN-VENISTE. So that they might correct them and then provide the corrected product to you?

Ms. LEY. Yes.

Mr. POTTS. Let me just add that I don't want to have any implication that I had any question in my mind, learning after the fact that that's what was done, that that was anything except the way it should be. In other words, I think it is standard procedure for a witness to review—just as we have our depositions taken by this Committee—to make sure if there are mistakes that were made or the transcription was erroneous or something. We make sure it is correct.

Mr. BEN-VENISTE. Let me ask you, Ms. Ley, whether you had conversations with the White House Counsel's Office with respect to whether, in Mr. Cutler's testimony, he would be referring to the OGE investigation?

Ms. LEY. One of the attorneys in my office and I went to a meeting at the White House Counsel's in Mr. Cutler's office. We met with Jane Sherburne and Sharon Conaway. We were given an oral proffer of facts by them as to what their internal investigation was, and we had some frank discussions about the applications of the standards of conduct at the time.

I came away from that meeting feeling that they did in fact want to refer to the Office of Government Ethics, or at least those conversations. So I asked if they would provide us a copy of whatever they were intending to have written or submitted that referred to OGE.

Mr. BEN-VENISTE. Did you review the transcript or a draft of Mr. Cutler's proposed testimony?

Ms. LEY. Portions of it. I don't believe we got all of his testimony. But certainly that portion that purported to be factual, I guess, or somehow described what had happened and anything in which they were going to refer to an analysis in which they were going to refer to OGE.

Mr. BEN-VENISTE. Then as a result of reviewing the draft of the proposed testimony of Mr. Cutler in which he would give the results of his investigation, did you make some suggestions for changes?

Ms. LEY. Yes, I did.

Mr. BEN-VENISTE. Were those changes accepted and made, to the best of your knowledge?

Ms. LEY. Well, they certainly took them to heart. They weren't the exact words I had seen before when his final testimony came out, but his final testimony, his final written testimony was not an incorrect statement of anything.

Mr. BEN-VENISTE. So, in substance, would it be fair to say that by taking your suggestions to heart, they were incorporated in substance in the prepared testimony?

Ms. LEY. Yes.

Mr. BEN-VENISTE. Ms. Ley, is it correct that at some point you had a conversation with Ms. Sherburne wherein you discussed whether it would be appropriate for the White House Counsel's Office to review transcripts of testimony taken by the RTC and the Treasury Inspectors General?

Ms. LEY. During that same meeting, when they were making an oral proffer of facts, they indicated something that we felt we could not then give advice as to the application of the standards of conduct because we thought that they had probably missed something. I certainly suggested—I asked, have you seen the transcripts of your own employees, and she indicated that they had seen some, which they had gotten from the employees' attorneys.

Mr. BEN-VENISTE. Did you not suggest it would be a good idea for White House Counsel's Office to review the transcripts?

Ms. LEY. If they were trying to do a thorough investigation of their own employees' conduct and they could have access to them, I suggested they look at them.

Mr. BEN-VENISTE. Now, did you have some reason to believe that Ms. Sherburne and Mr. Cutler were not trying to do a thorough and complete and comprehensive investigation?

Ms. LEY. No.

Mr. BEN-VENISTE. Do you have any reason to believe—and let me direct this to both you and Mr. Potts on what I have previously described as the big ticket item here—which is whether in your view the report which was completed under your direction and supervision was in fact a fair and comprehensive and unbiased report?

Mr. POTTS. Ours definitely, I confirmed that it was.

Mr. BEN-VENISTE. Do you have any reason to believe that it was skewed in any way as the result of anyone improperly coaching or suborning or distorting the testimony of any of the witnesses who made up the body of the factual information upon which you drew your conclusions?

Mr. POTTS. I had no such knowledge.

Ms. LEY. I had none.

Mr. BEN-VENISTE. Let me turn to a question that came up today in connection with the issue of Ms. Kerner's particular circumstance wherein a fire wall was created so that she might provide Counsel to the Inspector General's Office, despite the fact that she had come from or was assigned to Counsel's Office.

Mr. Potts, at some point, did you provide a written response to an inquiry from a Member of Congress with respect to the appropriateness of Ms. Kerner's situation?

Mr. POTTS. I did. I think you are referring to a letter that I wrote to Congressman Charles Canady which was a reply to a letter from him asking us to answer a series of questions about our analysis.

Mr. BEN-VENISTE. What was your conclusion, sir?

Mr. POTTS. We concluded that this was really not unusual, that actually the Inspectors General of several large Departments, including Defense, HHS, the Environmental Protection Agency, have that particular—that's the way they are organized, that the Inspectors General rely upon the Office of the General Counsel of that agency to provide the Inspectors General with legal advice.

We noted that the GAO had done a report, not at our request, that was apparently in response to some Congressman's request to specifically look into whether that arrangement was not desirable because those agencies might not receive the kind of independent advice that they should.

The conclusion of the GAO report was they could not find any evidence that the independence of the advice they received was impaired by that kind of organizational arrangement.

Mr. BEN-VENISTE. And indeed, specifically with respect to Ms. Kerner's involvement in this investigation, was it not your conclusion that the arrangements which were made in no way compromised the integrity of the investigation?

Mr. POTTS. Based on the information that we had at that time, that was our conclusion.

Mr. BEN-VENISTE. Now, finally, with respect to the issue that has come up during the course of our proceedings today—and with the Chairman's permission, I would like to refer to a transcript of Ms. Conaway's deposition which was apparently concluded late last evening on the issue of these White House summaries—I'm sorry—

the Treasury summaries and when they were provided to the White House.

Ms. Conaway's testimony was that they were delivered on July 27, 1995, 4 days after the actual transcripts were delivered on the July 23, pursuant to Secretary Bentsen's and Mr. Cesca's specific authorization.

So, it strikes me that as of July 27, this was simply work product, the summary of transcripts, the full body of which had already been transmitted. Mr. Chairman, again, we have done a lot of work late into the evening as late as last evening with respect to answering some of these questions, and again, it would seem difficult, and perhaps we will get further answers tomorrow and I'm sure you will raise further questions tomorrow.

But at the point where the record seems to rest at the moment, the summaries we have talked about so much today were not transmitted until July 27, according to the testimony of the person who received them, and that is as I say, 4 days after the actual transcripts themselves were delivered.

With that I have no further questions. I thank you two.

The CHAIRMAN. I will ask you, Ms. Ley, to take a look—I don't think you have seen it before—at the White House Office—that transmittal sheet. Familiarize yourself with it. There are, I think, 4 pages, July 27, to Bill Taylor. Do you see that? Then there is a page 1, Steve Katsanos. It is obviously a summary of his testimony, page 2. Then it goes over to July 13, another summary. Then there is a note about whether we gave transcripts to witnesses. "Please recall that I have a summary of the Katsanos' transcript to Caputo's lawyer." Let me ask you something——

Ms. LEY. That "Jane" referenced is not me.

The CHAIRMAN. I understand that. Let me ask you, were you aware of the fact that a summary of an RTC official was provided to Counsel for a White House employee, Ms. Caputo, Assistant to Mrs. Clinton, in which there is relevant testimony on his part as it relates to his interreactions with Ms. Caputo and that this was provided to her lawyer? Does this go well outside of the acceptable norm?

Ms. LEY. I wasn't aware certainly that any of this was provided.

The CHAIRMAN. If you were, would you not have been upset about that? Understand, a witness comes in, Mr. Katsanos in this case, and a summary of his testimony is provided not to him, not to his lawyer, but to the lawyer for an employee of the White House. There is relevant summary in the summary as it relates to his actions with a number of people in the White House, including Lisa Caputo. Would that not be well beyond the normal practice?

Ms. LEY. I think it might raise an issue under the standards of conduct, but you would need a number of facts, additional facts.

The CHAIRMAN. Well, wouldn't that be inappropriate? To share the summary of a witness with someone else's lawyer who that witness gave testimony about in terms of their conduct, whatever it was? Wouldn't that be tipping off the White House about another witness, an outside witness, and their testimony about the conduct of a White House employee? Is that inappropriate?

Ms. LEY. I would have to know more facts about whether the witness himself knew it was going to be done, what it was used for, who authorized the disclosure.

The CHAIRMAN. You know who authorized it. You see here the White House Counsel's Office. I'm asking you if this was brought to your attention and the White House Counsel's Office undertook the dissemination of this information, as it is indicated to Bill Taylor, counsel to Ms. Caputo. Isn't that well beyond the scope of what is appropriate? You are an ethics expert. How could that take place?

Ms. LEY. Well, I have to say I may be a better expert in the standards of conduct than ethics. But under the standards of conduct, I would need to know—we would have to go through the same sort of drill that we did with the information that was the subject of this report.

The CHAIRMAN. You weren't aware of this, were you? When you made this report, you were absolutely unaware of it?

Ms. LEY. No, but I don't think it would have affected it one way or another.

The CHAIRMAN. It would not? You would not have wanted to know if there were other reports similarly fashioned or furnished to other people?

Ms. LEY. The focus of the analysis that we did was on the conduct——

The CHAIRMAN. Of the Treasury——

Ms. LEY. —of employees earlier.

The CHAIRMAN. You did not actually look at nor did you give any indication about the appropriateness of the conduct of the officials at the White House; is that correct?

Ms. LEY. That's correct.

The CHAIRMAN. You did not give them a clean bill of health, so to speak; is that correct, because you weren't asked to do that?

Ms. LEY. Correct.

The CHAIRMAN. The only thing you gave them was as it related to the actions that you were apprised of at the Treasury Department on the basis of facts furnished to you by the IG's Offices; is that correct?

Ms. LEY. Correct.

The CHAIRMAN. OK.

Mr. GIUFFRA. Ms. Ley, let me just go through something, maybe both of you, just to confirm this for the record. At page 735 of our bound volume from the hearing in August 1994, Mr. Cutler says, "The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal issue." Is that accurate?

Ms. LEY. That is certainly not what I would have said if I were in his position.

Mr. GIUFFRA. Mr. Potts, did you say anything to anyone at the White House that would give the White House a basis for saying that you informally confirmed that no White House official violated any ethical standard with respect to the recusal issue?

Mr. POTTS. I never made such a finding and I didn't make such a statement.

Mr. GIUFFRA. Insofar as you know, none of your employees made such a representation to the White House that they could say that you had informally conferred—concurred?

Mr. POTTS. No one that I'm aware of did that, right.

The CHAIRMAN. I have no further questions.

Mr. Ben-Veniste, Senator Sarbanes.

Senator SARBANES. Ms. Ley, it is your understanding that all of the depositions were published on July 31, when the report was released?

Ms. LEY. Yes.

Senator SARBANES. Did you think that was appropriate?

Ms. LEY. In a redacted form, yes.

Senator SARBANES. So that 4 days later from the date we are talking about here—and I'm sure we will pursue this other instance further tomorrow—all of the depositions were made public. I mean, any witness could have had the depositions of every other witness; isn't that correct?

Ms. LEY. On July 31.

Senator SARBANES. Right.

Mr. BEN-VENISTE. With respect to the summary of July 27, it is clear, is it not, that all of your interviews had been concluded prior to that time?

Ms. LEY. All——

Mr. BEN-VENISTE. July 27.

Ms. LEY. All of the interviews completed by the IG. Everything we were reading was done.

Mr. BEN-VENISTE. As of what date?

Ms. LEY. Certainly by July 27. I'm not sure when the Comptroller's was done. It was sometime that week.

Mr. BEN-VENISTE. Mr. Ludwig's deposition was taken somewhat afterwards, but it has been the testimony here that as of the July 22, you received essentially a final draft report from the Inspectors General?

Ms. LEY. That was the date of their letter. We might have gotten it on July 23, but whatever.

Mr. BEN-VENISTE. If some summary of a deposition of a witness was sent to someone representing another witness on July 27, is it conceivable that that act could have somehow affected your report?

Ms. LEY. It wouldn't have affected our analysis, no.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Since there are no further questions that any of the Counsels or Senators wish to raise, I want to thank Mr. Potts and Ms. Ley for your time. I know you had to wait quite a while. I want to thank you for your candor and your testimony today.

We stand in recess until tomorrow morning at 10 a.m. You have the thanks of the Committee.

[Whereupon, at 5 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Thursday, November 9, 1995.]

[Prepared statement and appendix supplied for the record follows:]

PREPARED STATEMENT OF STEPHEN D. POTTS

DIRECTOR, U.S. OFFICE OF GOVERNMENT ETHICS

NOVEMBER 8, 1995

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear today to discuss the Office of Government Ethics (OGE) role in providing an analysis to Secretary Bentsen with regard to the application of the Executive Branch standards of ethical conduct to the conduct of Treasury Department employees in their contacts with White House officials concerning the Resolution Trust Corporation's (RTC) resolution of the Madison Guaranty Savings and Loan Association (Madison).

With me today is Jane Ley, Deputy General Counsel of OGE. Ms. Ley was responsible for overseeing the drafting of the OGE analysis.

Before we begin, I would like to provide some brief background about OGE and its role in the Executive Branch of the Federal Government.

The Office of Government Ethics was established by the Ethics in Government Act in 1978. Originally part of the Office of Personnel Management, OGE became a separate agency on October 1, 1989 (P.L. 100–598). The statute creating the Office of Government Ethics states it is responsible for providing, "Overall direction of Executive Branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." Specific responsibilities fall into six general areas:

- REGULATORY AUTHORITY—Develop, recommend, issue, and review rules and regulations pertaining to conflicts of interest, post-employment restrictions, standards of conduct, and public and confidential financial disclosure in the Executive Branch.
- FINANCIAL DISCLOSURE—Review Executive Branch public financial disclosure reports of certain Presidential nominees/appointees to assess potential violations of applicable laws or regulations and recommend appropriate corrective action; administer Executive Branch blind trust and Certificate of Divestiture programs.
- EDUCATION AND TRAINING—Implement statutory responsibility of, "Providing information on and promoting understanding of ethical standards in executive agencies."
- GUIDANCE AND INTERPRETATION—Prepare formal advisory opinions, informal advice letters, and policy memoranda on how to interpret and comply with requirements on conflict of interest and post-employment statutes, standards of conduct, and financial disclosure requirements applicable to the Executive Branch; consult with agencies' ethics officials in individual cases.
- ENFORCEMENT—Monitor agency ethics programs and review compliance, including financial disclosure systems; refer possible violations of conflict of interest laws to the Department of Justice, and advise them on prosecutions and appeals; and in limited circumstances, where an agency cannot or will not act, undertake a review of possible ethics violations and order corrective action or recommend disciplinary action.
- EVALUATION—Evaluate the effectiveness of conflict of interest laws and recommend appropriate amendments.

The Office of Government Ethics is organized into three major program areas: Office of General Counsel and Legal Policy, Office of Program Assistance and Review, and Office of Education. They are supported by a small administrative staff who provide normal office functions: personnel, budget, administrative services, and information management.

Throughout the Executive Branch there is a network of Designated Agency Ethics Officials (DAEO's), one in every executive department and agency. These individuals and their staffs make up the "Federal ethics community" to which OGE communicates policy and regulatory changes. These men and women are employees of the agencies and they conduct the Federal ethics program on site: giving advice and guidance on matters of conflict of interest, financial disclosure, standards of ethical conduct, and post-employment restrictions; educating employees about these statutes and standards; assisting in individual employee disciplinary actions and implementing their agencies public and confidential financial disclosure systems.

OGE is the repository of the public financial disclosure reports filed by officials in high Governmental posts, including the President and the Vice President and those holding Presidential appointments requiring confirmation by the Senate. OGE releases publicly available financial disclosure reports to members of the public who request them.

On March 3, 1994, then Secretary of the Treasury Lloyd Bentsen wrote asking OGE to provide him with views on whether any ethics or conflicts questions were raised by certain meetings or other contacts between employees of the Department of the Treasury and the White House regarding the Resolution Trust Corporation's resolution of the Madison Guaranty Savings and Loan Association. The Office of Government Ethics is not an investigative agency. However, I offered to provide the advice and assistance of my Office to the Inspectors General of Treasury and the RTC in connection with an administrative investigation of the matter to be conducted by them. I agreed to review the report issued by these offices to provide whatever advice I believed would be appropriate under the circumstances. It was the responsibility of the Secretary to make any necessary determinations with regard to the conduct of Treasury employees. OGE's analysis of the report of the Inspectors General was provided to Secretary Bentsen in a letter dated July 30, 1994. The Department of the Treasury made that letter public on July 31, 1994.

This concludes my statement. We will be happy to respond to any questions you may have.

DEPARTMENT OF THE TREASURY
WASHINGTON D.C. 20220

CONFIDENTIAL

JUN 27 1994

MEMORANDUM FOR JEAN E. HANSON
GENERAL COUNSEL

FROM: ROBERT P. CESCA
DEPUTY INSPECTOR GENERAL

SUBJECT: Provision of Legal Advice and Services to OIG

As you know, the Inspector General has been requested to carry out an investigation into communications between Treasury employees and White House staff concerning the collapse of Madison Guaranty Savings and Loan, and related matters. It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

In addition, a separate job element, concerning the provision of legal advice and services in connection with this specific investigation, will be added to Ms. Kerner's performance standards for rating periods July 1, 1993 through June 30, 1994, and July 1, 1994 through June 30, 1995. The determination on relative job significance and job element performance for this job element will be at the sole discretion of the Inspector General. Moreover, we have agreed that the overall rating of Ms. Kerner's performance in each of these rating periods will need to receive the concurrence of the Inspector General.

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review. Should you have any questions concerning this arrangement, please feel free to call me directly.

cc: Dennis I. Foreman
Francine J. Kerner

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I N T E R O F F I C E M E M O R A N D U M

Date: 18-Jul-1994 06:24pm EST
From: Francine Kerner
KERNER
Dept: COUNSEL
Tel No: (202) 622-1090

O: James Cottos (COTTOS)

C: Raisa Cesario (CESARIO)
C: Robert Cesca (CESCA)

ubject: Delivery of Transcripts

In accordance with our discussion earlier today, I permitted the Office of the Assistant General Counsel for Administration to copy and retain for their use the witness transcripts in my possession.

Ken Schmalzbach, the Assistant General Counsel for Administration, has advised me that Secretary Bentsen will not permit these transcripts to be shared among agency employees until the Senate Banking Committee completes its depositions.

Also, I have advised Jane Ley of OGE that I will obtain transcript verification from each witness, starting with key witnesses. Attorneys for Hanson, Steiner, and Nussbaum have transcripts. Altman's attorneys will pick up a transcript tomorrow. I will contact attorneys for the other witnesses tomorrow, working with RTC OIG to obtain verifications.

Francine

[redacted]

11/9/94
H.1 366

From: Kenneth Schmalzbach
To: KNIGHTE
Date: 7/28/94 10:44am
Subject: Ryan and Adair telephone calls

Ed, the next call this morning should be deferred until after 11:30, and it should be to Ryan, not to Adair.

I just heard from IG Counsel Francine Kerner, who is meeting with RTC IG people to determine final changes to the IG's chronology. At 11:30, that group will meet with Ellen Kulka, who is expected to argue that the transcripts of the I.G.'s interviews should not be released at all with the IGs' report. If she fails in that argument (as the IGs are determined that she will), she must be asked to review the transcript for any nonpublic information because her shop has the technical knowledge of the Madison investigation necessary to do so. There is concern that she may drag her feet on completing the task.

Accordingly, you need to place the call to Jack Ryan, the deputy CEO at RTC, and not to Jack Adair. Kulka reports to Ryan, and it must be Ryan who presses her to accomplish the task completely and quickly.

You also need to be aware of a piece of background. Counsel to RTC's IG, Pat Black, is telling this morning's gathering of the IG people working on the report that if Kulka fails to win on the issue of not making the transcripts public, she is prepared to testify at the hearings that the IGs group has been under the sway of the Secretary in performing their investigation. Kulka HAS NO FACTS TO SUPPORT THAT PERSPECTIVE AND I DON'T BELIEVE THERE'S ANY BASIS FOR THAT PERSPECTIVE. However, you need to be sensitive to this issue as you talk to Ryan.

I expect to hear from IG Counsel how the meeting with Kulka went at about noon. I will call you and give you revised talking points for the Ryan call as soon as I hear from IG Counsel.

Arkansas Probe Sensitive From Start

Investigation of Collapsed S&L Affected by Links With the Clintons

By Susan Schmidt
and Michael Isikoff
Washington Post Staff Writers

Last September, as officials of Resolution Trust Corp. were preparing to ask the Justice Department to open a criminal investigation into a failed Arkansas savings and loan, they faced an unusually sensitive problem: Should they mention that the case involved President Clinton and his wife?

There was no conclusive evidence that the Clintons had done anything illegal. But RTC investigators had turned up evidence that a depositor funds from the Whitewater Madison Guaranty Savings Loan, may have been diverted improperly to Clinton's 1984 gubernatorial campaign account and Whitewater Development Co., a real estate venture jointly owned by the Clintons and James McDougal, Madison's owner.

Some RTC officials believed questions about the Clintons and their dealings with Madison had to be laid out in RTC's written referral for further federal investigation. But others thought that would be a strategic error: A detailed description of activities involving the Clintons had been presented to the Justice Department in September 1992 and had been languishing for a year, prompting fears among RTC staff that the department was intent on shuttling the politically sensitive case.

The RTC finally did ask federal prosecutors in Little Rock, Ark., last fall to investigate nine suspected criminal matters arising out of Madison's 1989 failure, naming the Clintons, along with other Arkansas politicians who had dealings with McDougal.

Among other things, prosecutors were asked to examine whether Hillary Rodham Clinton's representation of the S&L before state regulator appointed by her husband resulted in lenient treatment that allowed Madison to stay

See WHITEWATER, A9, Col. 1

WHITEWATER, From A1

long after it was on a clear path to vency.

Today, those issues are the focus of a Justice Department investigation that has become a growing headache for the Clinton White House. While the Clintons have repeatedly said they were aware of no wrongdoing at Madison, the White House, under heavy congressional and media criticism and possibly facing a subpoena, agreed late last month to turn over documents about Whitewater that were found in the office of deputy White House counsel Vincent Foster after his suicide on July 20.

At the same time, the handling of the Madison and Whitewater issues by the RTC and the Justice Department has underscored the politically charged nature of the probe. Although the RTC has succeeded in sparking a federal inquiry, the matter of Madison S&L has frustrated some RTC officials who have said they worried about "packaging" the case and "selling" Justice on opening an investigation that should have begun much earlier.

Republicans, saying the situation is rife with conflicts of interest, have bombarded Attorney General Janet Reno in recent weeks with calls for the appointment of an independent counsel.

"As attorney general, you have been placed in an uncomfortable, if not untenable, position of being both the chief law enforcement official of the United States and the chief legal advisor to the president," Rep. Jim Leach (R-Iowa), ranking minority member of the House Banking Committee, told Reno in a letter calling for the naming of a special counsel.

Reno has resisted those calls, saying anybody she would appoint would ultimately report to her and would not be seen as truly independent. "I have directed the career prosecutors to pursue it [the Madison probe] in the most appropriate and vigorous manner possible," Reno said at a recent news conference.

The history of the Madison investigation, pieced together from interviews with Justice Department and RTC officials along with documents from the case, suggests that the involvement of the Clintons has repeatedly affected its progress, as investigators debated how to proceed in a probe that has such potentially large political consequences.

The inquiry began in 1989 as one of hundreds of investigations of failed savings and loans throughout the country that led to the creation of the Resolution Trust Corp. itself. The RTC charter was to close down the thrifts, to dispose of S&L assets and to try to recover through the courts federally insured funds that had been lost through poor management or possible criminality.

The transformation of a relatively routine RTC inquiry into a political hot potato began in March 1992 when news accounts detailed Clinton's longtime relationship with McDougal and their investment together in Whitewater. Those accounts suggested that McDougal had made the Clintons partners in a sweetheart real estate deal in return for lenient state treatment of Madison.

The RTC quickly sent a new team of investigators to Arkansas to aid on the Madison probe, looking at, among other things, the business relationships among McDougal and local politicians.

At the same time, investigators began to explore the role of Hillary Clinton and her law firm in representing the thrift during a 1985 encounter with state banking authorities.

The Rose law firm had represented Madison before the Arkansas securities commission when the thrift, judged critically short of capital by federal examiners, sought approval for a new stock plan to stay afloat. Hillary Clinton was one of two Rose lawyers on that effort, earning a combined $2,000 monthly retainer for the firm. The plan was approved by Beverly Bassett Schaffer, Clinton's newly appointed state securities commissioner, whose law firm also had represented Madison. The plan was never implemented.

Another Rose partner, Clinton confidant Webster L. Hubbell—now associate attorney general under Reno—had his own ties to Madison through his father-in-law, Seth Ward. Ward was an executive with Madison's real estate subsidiary and had extensive financial dealings with the S&L.

But despite these potential conflicts, the Federal Deposit Insurance Corp.—the federal agency that insures savings and loan deposits—in 1989 hired the Rose firm to represent the government in a lawsuit against Madison's accounting firm. The suit, handled by Hubbell, contended that the accounting firm had failed to alert Madison's board to reckless lending and management practices that led to insolvency. It was settled for $1 million in 1990.

How much the FDIC knew when it hired Rose about the relationships among Madison and the firm and its partners is unclear. Hubbell has contended that his dealings with Madison were fully disclosed. A series of internal FDIC memos at the time warned against hiring Hubbell due to conflicts involving his father-in-law, and FDIC and RTC lawyers have been conducting an inquiry in recent weeks into whether the potential conflicts were properly reported.

In addition to these efforts through civil suits to recover funds used to consummate Madison transactions, the RTC by fall 1992 had prepared a 21-page document targeting McDougal and his ex-wife Susan McDougal for criminal investigation by the federal prosecutor in Little Rock.

The referral named then-presidential nominee Clinton and his wife, as well as current Arkansas Gov. Jim Guy Tucker (D), as principals in "shell corporations" created by McDougal. It said that while there was insufficient evidence at that point to prove that the Clintons and Tucker knew about suspected check-kiting and accolint overdrafts authorized by McDougal, they had stood to benefit from such activities.

The referral was sent to Charles Banks, the Republican U.S. attorney in Little Rock, during the waning days of the Bush administration in the fall 1992. Banks already had been stung once in his dealings with McDougal, having failed to win a conviction of him in a 1990 bank fraud case and prompting critics to accuse Banks of mounting a politically motivated prosecution. Hoping to wash his hands of Madison and McDougal, Banks asked that he be recused from the case and that the referral go directly to the Justice Department in Washington, current and former federal officials familiar with the matter said.

In an "urgent report" memo to top Justice lawyers on Oct. 7, 1992, Banks's chief assistant, Mac Dotson, noted that the Clintons were named as potential witnesses in the referral. Dotson wrote that he believed, based on the facts outlined by the RTC, that further investigation "is warranted."

With less than a month to go before the presidential election, aides to then-Attorney General William P. Barr were concerned that any special interest shown in the case could backfire politically, sources said. An

using the Justice Department for partisan purposes. That point was all the more forcefully made, the sources said, by those who noted the RTC had made no specific allegation of wrongdoing by the Clintons.

In light of Banks's recusal, the case was assigned to career lawyers in the fraud section in the criminal division of the Justice Department, but senior Bush administration Justice officials ordered that it get no special treatment.

Many RTC referrals are never pursued either because the Justice Department does not believe they will result in a prosecutable case or because of limited resources. A March 19, 1993, memo by criminal division attorneys working on the case concluded that the RTC referral did not "appear to warrant initiation of a criminal investigation" of Madison. But the memo, signed by John C. Keeney, then acting chief of the division, left the final decision to federal prosecutors in Little Rock. He "would not question a decision by the U.S. attorney to decline further action on the referral," Keeney wrote, according to sources familiar with the memo.

However, the results of the Justice review were not communicated to the RTC for months, sources said. In the meantime, the RTC renewed its own inquiry into Madison, sending a four-member team of agency investigators back to Arkansas in January 1993.

By September, having gathered much more information and still having received no official decision on the first referral, the RTC drafted a new request for the Justice Department. "This expanded" referral recommended investigation of nine separate matters of possible criminal behavior, adding details of new transactions and conflicts of interest, and naming a number of new players, sources said.

Those who believed that naming the Clintons in the first referral led to official inaction argued the president and his wife should not be named in the new, expanded request. Additional questions about whether bringing more bank fraud charges against McDougal would constitute double jeopardy helped spark a fierce debate among investigators and RTC professional liability attorneys in Kansas City, Mo., agency sources said.

RTC field officials took the unusual step of appealing to top RTC brass in Washington to make the final decision on whether to include the Clintons in the new referrals. But the Washington headquarters refused to intervene, ordering the field office to follow standard procedure.

The new referrals were sent in October to the new U.S. attorney in Little Rock, Paula Casey, a Clinton appointee and former campaign volunteer who was once a student of the president's at University of Arkansas law school. The requests also sought further investigation of current Democratic Gov. Tucker's dealings with Madison, as well as numerous other big borrowers and Madison officials—many of them prominent in Arkansas political and civic circles.

On Oct. 27, with the stack of new criminal referrals sitting on her desk, Casey responded to six months of RTC inquiries about the fate of the first referral, then a year old. She told the RTC that she "concurred" with the Justice Department's decision to forgo an investigation due to "insufficient information."

Days later, in the wake of news reports about the new RTC referrals and questions about Casey's ties to Clinton and other senior Democrats in the case, Casey recused herself from further involvement. The Justice Department announced it was sending three career prosecutors to Little Rock to conduct the investigation.

WP 1/5/94

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AM-Whitewater-Regulators, Bjt,690<
Regulators Scramble To Conduct New Review Of Madison Guaranty<
By RICHARD KEIL Associated Press Writer

WASHINGTON (AP) The government's savings and loan cleanup agency is scrambling to conduct yet another review of the failed Arkansas S&L that has dragged President Clinton into controversy.

The Resolution Trust Corp.'s goal this time, regulators say, is to determine whether the S&L, which had numerous signs of problems, should have been closed earlier than 1989 and whether anyone else can be sued now for its failure.

The review is driven by the transformation of Madison Guaranty Savings & Loan from a relatively small failure in the multi-billion dollar S&L debacle to the subject of a politically charged investigation of the Clintons' financial dealings.

"The concern is that maybe they missed something the first time around," said one RTC official working on the new investigation, who spoke only on condition of anonymity. "A close look is being taken at everything that was done then, based on everything that we know now."

Regulators have had an on-again, off-again interest in Madison and its owner, James McDougal, who also was business partner with the Clintons in Whitewater Development Corp., a money-losing real estate venture.

Shortly after the S&L's failure, which cost taxpayers at least $47 million, the Federal Deposit Insurance Corp., the RTC's predecessor, sued an Arkansas accounting firm, accusing it of negligence in Madison's failure.

The FDIC contracted with the Rose Law Firm, where Hillary Rodham Clinton and No. 3 Justice Department official Webster Hubbell then worked, to handle the lawsuit. It was eventually settled for $1 million.

The RTC resumed interest in the S&L in 1992, conducting a more detailed investigation through its Kansas City regional office into Madison's demise.

Agency investigators uncovered what they alleged was a check-kiting scheme that drained the thrift of money for the benefit of prominent Arkansans, including the Clintons.

The Clintons and McDougal have repeatedly said they did nothing wrong in their business dealings. RTC investigators have stressed the Clintons are not a subject or target of the probe although they may have benefited from some transactions.

The RTC drafted nine criminal referrals recommending possible prosecutions and forwarded them to federal prosecutors.

Those referrals were still being reviewed by Justice Department prosecutors when special counsel Robert Fiske was appointed to conduct an independent investigation in January.

Fiske's investigation, now getting under way in Little Rock, Ark., will focus on criminal matters.

The RTC, meanwhile, is focusing on two tasks: copying and forwarding tens of thousands of its relevant documents to Fiske and reviewing its own work to see if it missed any potential civil claims.

When the latest review began, the RTC was racing to meet a Feb. 28 deadline to file any remaining lawsuits in the case. Congress, however, intervened and extended that deadline by nearly two years.

To assist the review, the RTC has hired Madison, Pilsbury and Sutro, a high-profile law firm with experience in prosecuting politicians, officials said. The firm has already been paid $1.7 million of the $3.5 million the agency budgeted for the case, according to a document obtained by the AP.

Four RTC officials, all speaking on condition of anonymity, said agency workers have spent much of the past week copying Madison-related documents in an Office of Thrift Supervision warehouse in Dallas.

One document being closely studied is a report on the thrift's financial health prepared in 1987 by a Memphis law firm that highlighted alleged risky real estate loans, the RTC sources say.

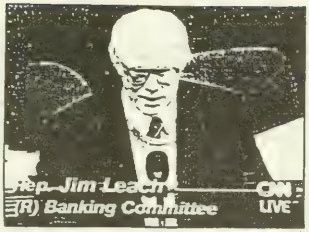
That report, by the firm of Borod and Huggins, was ordered by regulators just one year after examiners wrote a scathing review that concluded Madison's loans to insiders and poor real estate dealings had left it on the brink of insolvency.

According to officials familiar with the 1987 report, Madison's independent examiners determined that the S&L's financial health had not improved.

"The concern now is, based on these reports, and the other documents showing that the thrift was in bad shape, why was it allowed to stay open," one RTC official said. "The documents make clear that this was a troubled institution."

Regulators didn't take over Madison until 1989, three years after the first indications that it was in serious financial trouble.

Washington Times
3/25/94



AP

Foe: Rep. Jim Leach, in a CNN image, tells the House he has evidence of Whitewater misdeeds.

Madison prober urged to back off

RTC staffer seeks protection for job

By Michael Hedges
THE WASHINGTON TIMES

A senior Resolution Trust Corp investigator says she sought whistleblower protection after being pressured by her Washington superiors to change her conclusion that the Whitewater-Madison case is a "highly prosecutable case of check kiting" involving President and Mrs. Clinton.

In notes describing her Feb. 2 meeting with an RTC official that were made public yesterday by Rep. Jim Leach, the investigator, L. Jean Lewis, said FBI and Justice Department officials reviewed her findings and concurred with them.

Mrs. Lewis, the senior criminal investigator in the RTC's Kansas City, Mo., office, which has jurisdiction over Arkansas, also disputed the finding by Clinton-appointed U.S. Attorney Paula J. Casey in Little Rock last October that the Madison case should not be prosecuted.

During their meeting, Mrs. Lewis said she was told by April Breslaw, a lawyer in the RTC's Washington headquarters, that "people at the top" kept getting asked about Whitewater and they would be "happier" if they could have answers that would "get them off the hook."

Mrs. Lewis said she refused to give "politically correct answers just to get them off the hook."

Two of the "head people" Miss Breslaw mentioned were RTC Deputy Chief Executive Officer Jack Ryan and RTC General Counsel Ellen Kulka, according to Mrs. Lewis.

They worked directly under the agency's acting director, Deputy Treasury Secretary Roger Altman. A close friend of the Clintons, Mr. Altman was subpoenaed a federal grand jury after it was disclosed he had secret meetings with White House officials to discuss the RTC's Madison probe.

Since that meeting, Mrs. Lewis has requested protections under the whistleblower laws, congressional officials said yesterday.

According to ABC News, Miss

see RTC, *page A19*

RTC

From page A1

Breslaw yesterday "categorically denied" any wrongdoing.

The RTC did not return calls for comment.

Mrs. Lewis insisted the Clintons must have known they were benefitting from improper cash withdrawals from a taxpayer-insured savings and loan.

Mr. and Mrs. Clinton, partners in the Whitewater Development Corp. with James B. McDougal, owner of Madison Guaranty Savings and Loan Association in Little Rock, "knew they had real estate ventures that were not cash flowing, but also knew that their mortgages and/or notes were somehow being paid," the RTC investigator said.

"I pointed out these business partners are intelligent individuals, the majority of them being attorneys, who must have concluded that McDougal was making the payments for their benefit," Mrs. Lewis wrote.

Mr. Clinton and his wife, Hillary, are lawyers; the only Whitewater partner, Mr. McDougal's wife at the time, Susan, is not.

"If you know that your mortgages are being paid, but you aren't putting money into the venture, and you also know the venture isn't cash flowing, wouldn't you question the source of the funds being used for your benefit?" Mrs. Lewis asked in the memo. "Would you just assume that your partner was making these multi-thousand dollar payments out of the goodness of his heart?"

The president said in his televised news conference last night that he has "no knowledge" of the pressure from Washington regulators cited by Mrs. Lewis.

Experts on federal law yesterday said the "check kiting" described by Mrs. Lewis, if proven, would constitute federal bank fraud, which is punishable by up to 10 years in prison.

The Justice Department began a criminal investigation into the failure of Madison late last year.

Mrs. Lewis detailed to Miss Breslaw six-figure losses to taxpayers as money flowed from Madison into the Whitewater account to pay bills incurred by the Clintons and McDougals, according to her notes.

She found that there were at least a dozen companies through which Madison funds were siphoned, causing large taxpayer losses, Mrs. Lewis said. By the time Madison was closed by federal regulators, losses amounted to about $50 million.

"It was my belief that the losses to Madison from the Whitewater account alone would easily exceed $100,000," she wrote. "I further added that the end loss result from the entire scam, using all 12 companies/entities would be hundreds of thousands of dollars in what were essentially unauthorized loans."

Asked by Miss Breslaw whether it was possible to say without question that Whitewater caused a loss to the federally insured Madison, Mrs. Lewis wrote, "I stated that, as far as I am concerned, there is a clear cut loss."

In other documents released yesterday by Mr. Leach, the Iowa congressman who is the Republican point man on Whitewater-Madison, Mrs. Lewis described in a Nov. 10, 1993, computer letter that "the powers that be" had ordered her off the Madison investigation. She did not say specifically who wanted her off the case.

In her recounting of the Feb. 2 meeting, Mrs. Lewis said she told Miss Breslaw that she was puzzled by the Clintons' behavior as the Whitewater partnership continued into the mid-1980s and Mr. McDougal's business fortunes worsened.

"Wouldn't you wonder even more if you knew that your business partner's main source of income, an S&L, was in serious financial difficulty, which by 1985 was fairly common knowledge?" she asked in the memo.

The Lewis memo laid out what she said was $70,000 that had flowed from Madison into Whitewater in a six-month period. She described one $30,000 check from Madison to Mr. McDougal in April, 1985 which he directed "be paid directly to Whitewater Development."

That check, a "bonus" from Madison, went to cover a $28,000 overdraft in the Whitewater account, Mrs. Lewis said.

While probing the failure of Madison, Mrs. Lewis and others concluded that the Clintons may have been involved with money funneled from the S&L to Clinton campaigns and Whitewater.

Those findings were contained in two separate reports outlining criminal referrals to the Justice Department by Mrs. Lewis, in September 1992 and October, 1993.

"There is really nothing I can say about the investigation," Mrs. Lewis said,adding that she had not yet been requested as a witness before any congressional committee or by Mr. Fiske but was anticipating she would asked to tell what she knew.

In September, 1992, an initial report outlining potential criminal wrongdoing by the McDougals in their handling of Madison was sent to the then-U.S. Attorney Charles Banks in Little Rock. No action was taken on it.

Early in the Clinton administration a decision was reached by the U.S. Attorney's Office, now headed by Mrs. Casey, who worked on Mr. Clinton's presidential campaign and whose husband was appointed to a state job by Gov. Clinton, that the investigation should not go forward, officials said. But it was not formally declined when first reviewed.

In the summer of 1993, a team of RTC investigators led by Mrs. Lewis had uncovered a great deal of additional evidence that linked the Whitewater land deal to the losses at Madison.

The 21-page report referring nine matters for criminal inquiry was sent to the Justice Department in October. While naming the Clintons, the report didn't directly link them to the nine specific criminal allegations outlined.

In late October, at least several days after the nine RTC referrals had been forwarded to Justice, Mrs. Casey decided to decline the first RTC referral. After it was reported that a second set of referrals had gone from the RTC to Mrs. Casey's Little Rock office, she recused herself from the investigation.

Mrs. Casey said this week that she could not comment directly on her decision to decline prosecution of the Madison case. She denied any improper contacts between her office and the Justice Department in Washington on the Whitewater criminal referrals.

On Feb. 2, the same day Mrs. Lewis and Miss Breslaw were meeting in Kansas City, Mr. Altman met with White House officials, including former Counsel Bernard Nussbaum and Margaret Williams, Mrs. Clinton's chief of staff, and the Whitewater-Madison case was discussed.

That meeting and other contacts between Mr. Altman and the White House are now the subject of a grand jury investigation begun by Whitewater special counsel Robert B. Fiske Jr. Mr. Altman has recused himself from matters related to Whitewater-Madison.

Howard Schloss, a Treasury Department spokesman, said yesterday that Mr. Altman was not available for comment. Mr. Schloss repeated Mr. Altman's earlier statement that the Feb. 2 meeting was on procedural questions and not the "substance" of the Whitewater-Madison investigation.

Miss Breslaw had previously surfaced in the Whitewater-Madison story as the federal official who insisted that a contract to represent Madison in a lawsuit once it had been taken over by the government be given to Little Rock's Rose Law Firm despite protests by three senior regulators that a conflict of interest existed.

Trail of Memos on Whitewater Inquiry

By TIM WEINER
Special to The New York Times

KANSAS CITY, Mo., March 26 — Nearly two years ago, L. Jean Lewis, a Federal investigator of financial fraud, fixed her attention on a collapsed Arkansas savings and loan, Madison Guaranty, run by a former business partner of Bill and Hillary Clinton.

Ms. Lewis began to see a paper trail, a pattern of what she regarded as suspicious loans and potential fiscal crimes, including "a $1.5 million check-kiting scheme," according to memorandums she wrote from her post at the Resolution Trust Corporation, the Federal agency charged with unraveling the savings and loan collapses of the 1980's.

Last week, the string of memorandums she wrote about Madison, and about her growing belief that Washington officials were trying to pull back from her most stinging conclusions, came to the public's attention as Representative Jim Leach of Iowa used them as a basis for a blistering critique of Mr. Clinton.

Mr. Leach, the senior Republican on the House Banking Committee, has said Ms. Lewis had sought Congressional protection as a whistle-blower. Her memorandums were part of a stack of documents he made public to support his accusations. But in their details, the documents also provide a window into the origin of the Whitewater affair that has enveloped the Clinton Presidency.

Ms. Lewis was removed from her role as a lead investigator in the case last November and her conduct has been questioned by Federal banking officials. The question now is whether Ms. Lewis is a misguided zealot or the woman who exposed the truth behind the Whitewater affair.

Repeated Recommendations

In memorandum after memorandum, she made 10 separate recommendations for criminal investigations into the Clintons' former business partner in a real estate venture, the Whitewater Development Company, James B. McDougal, and his associates. She described her mounting dismay as the criminal referrals disappeared from the R.T.C.'s offices on Main Street in Kansas City into the maze of the Justice Department in Washington.

Last Jan. 6, she wrote a memorandum to herself after a conversation with a reporter: "It's beginning to sound like somebody or multiple 'somebodies' are trying to carefully control the outcome of any investigation surrounding the R.T.C. referrals, and that the beginnings of a cover-up may have already started months ago."

Ms. Lewis, who was ill with bronchitis last week, and is under orders from her superiors not to speak to the press, declined today through an agency spokeswoman to respond to questions. But she met earlier this month with Robert E. Fiske Jr., the special counsel investigating the Whitewater affair, and her colleagues in Kansas City are pursuing their own investigation of whether any of Madison Guaranty's vanished assets benefited the Clintons politically or financially.

Ms. Lewis contends that Mr. McDougal's savings and loan allowed Whitewater, the land development company he and his wife owned with the Clintons, to cash large checks with insufficient funds in the 1980's, and that this created a loss of at least $70,000 for the S.& L. She came to believe that the Clintons must have known that Mr. McDougal was using Madison's money to shore up their share of the Whitewater project, which ultimately failed.

Prompted by News Report

Nothing in Ms. Lewis's work implicates the Clintons in any crime. Her memorandums instead describe actions and inactions by Federal officials in the Clinton and Bush Administrations that sought to sever the financial links she saw between Madison Guaranty, Whitewater and the Clintons.

Ms. Lewis was one of five investigators responsible for uncovering any crimes in the failures of 189 savings and loans in a 21-state region from the Pacific Northwest to the Appalachians.

She began to focus on Arkansas after the initial news report in March 1992 of the Clintons' involvement in the Whitewater land venture. Though Mr. McDougal was acquitted of Federal bank fraud charges in 1990, Ms. Lewis was assigned to a follow-up investigation of Madison in the summer of 1992.

Her memorandums say she quickly learned that a Little Rock lawyer who had worked at Madison had "fabricated" two years of records for a subsidiary of Madison. She suspected this was done to create the appearance of legitimate financial transactions, when, in fact, those transactions had drained the assets of Madison. The savings and loan collapsed in 1989 at a cost of taxpayers of at least $47 million.

Her suspicions led her to a Little Rock warehouse, where the records of Mr. McDougal's defunct savings and loan were strewn about haphazardly. Piecing together the Madison files, she concluded in August 1992 that there had been "a $1.5 million check-kiting scheme between the McDougal and/or McDougal business partner-controlled entities, including Whitewater," her memorandumss said.

> Was an R.T.C. official too zealous or too accurate?

She and her colleagues sent a criminal referral — a recommendation to begin a criminal investigation — to the F.B.I. and the United States Attorney in Little Rock on Sept. 2, 1992, as Mr. Clinton's campaign to defeat President George Bush was in full swing.

Nothing happened. Eight months later, in May of 1993, Ms. Lewis sought to find out why.

She spoke with a Federal prosecutor in Little Rock, Bob Roddey. According to a memo she wrote about the conversation, he told her that the United States Attorney in Little Rock, Charles A. Banks, a Republican appointee, had deemed the case "politically hot." Deciding the previous September that an investigation involving Mr. Clinton would be perceived as a political dirty trick, he had forwarded the case to the Justice Department in Washington.

The political heat was generated in part by Ms. Lewis's finding that the Whitewater development drained tens of thousands of dollars from Madison and thus may have contributed to its collapse. In addition, a Resolution Trust Corporation official in Kansas City said, the investigators came to suspect that Madison money might have been improperly donated to Mr. Clinton's 1984 campaign for Governor of Arkansas.

The Clintons and Mr. McDougal have denied any wrongdoing in connection with Whitewater.

Political Factors Suspected

Throughout the summer of 1993, Ms. Lewis called Washington, trying to track what had become of the case. Her memos reflect her growing belief that "political ramifications" were undermining it.

The request quietly died at the Justice Department early that year, as officials decided that there were not grounds for a criminal investigation, according to R.T.C. memorandums. But in a lapse that has not been explained, the Kansas City office was not notified.

Meanwhile, three more criminal investigators from the R.T.C. joined Ms. Lewis in reviewing the loans, checks and land records of Madison and its subsidiaries. On Oct. 8, 1993, they sent nine new criminal referrals on the case to the F.B.I. and the United States Attorney in Little Rock, Paula Casey, newly appointed by the Clinton Administration.

On Nov. 1, Ms. Casey wrote to Ms. Lewis, saying both she and the Justice Department had decided that the original criminal referral had "insufficient information ... to warrant the initiation of a criminal investigation."

Within days, Ms. Lewis was removed as the lead R.T.C. investigator in the case. In a memorandum to to her colleagues, she wrote, "The Powers That Be have decided that I'm better off out of the line of fire (and I ain't arguing)."

An Official Is Critical

R.T.C. officials in Kansas City declined to formally respond to questions about Ms. Lewis's investigation or the Whitewater case this week.

But some officials have been critical of her work and her charges. One is April Breslaw, a career lawyer with the Federal Deposit Insurance Corporation in Washington, the Government agency with overall responsibility for banks and failed savings and loans.

In a memorandum also made public by Mr. Leach, based on a tape recording she made, Ms. Lewis charged that Ms. Breslaw sought in a meeting in Kansas City on Feb. 2 to persuade investigators to tone down their Whitewater charges.

In an thterview on Thursday, Ms. Breslaw denied that assertion, and criticized the quality of Ms. Lewis's investigation. She said Ms. Lewis was exaggerating the situation to try to minimize her own shortcomings as an investigator. And senior Justice Department officials remain unconvinced that Ms. Lewis and her colleagues made a convincing case for prosecution in their initial set of referrals.

Now that Mr. Fiske has taken over the Whitewater investigation, Ms. Lewis is keeping her own counsel, her memos show. On Feb. 7, a Federal prosecutor in Little Rock called her and started an informal chat about the Madison case. She told him that "I'd formed my own conclusions on that point, and that's where they would stay — my own."

NYT 3/27/94

RTC worker spotted trail after '92 tip

Washington Times 3/28/94

By Michael Hedges
THE WASHINGTON TIMES

KANSAS CITY — Working out of first-floor offices in the old Board of Trade building here, Resolution Trust Corp. investigators headed by Laura Jean Lewis in 1992 and 1993 set in motion events that could result in lasting damage to the Clinton presidency.

Beginning with a tip that the Madison Guaranty Savings and Loan had made some questionable transactions, Mrs. Lewis — then an RTC investigator in Tulsa, Okla. — found herself in warehouses trying to make sense of incomplete, deteriorating Madison records.

But enough still existed for Mrs. Lewis to reach some startling conclusions, such as that Bill Clinton and his wife may have been involved in money being funneled from Madison to Clinton campaigns

see RTC, *page A10*

RTC

From page A1

and a land deal called Whitewater that the Clintons shared with Madison owner James McDougal, officials said.

Those findings — contained in two separate reports outlining criminal referrals prepared after Mrs. Lewis came to Kansas City in 1992 — touched off what some investigators believe were unethical efforts by officials in Washington to contain the damage and control the investigation.

The work by Mrs. Lewis, 40, and the other Kansas City investigators on the Madison case have become the fulcrum upon which Republicans plan to pry open the mysteries of Whitewater-Madison during congressional hearings.

On Thursday Rep. Jim Leach, Iowa Republican, released dozens of documents in which Mrs. Lewis outlined her investigation and described some of the pressure she said she had received from the "head people" at RTC to "get them off the hook."

Mrs. Lewis, her voice a competition between the soft drawl of her native Texas and the bronchitis that has kept her from work recently, said, "There is really nothing I can say about the investigation." She said she anticipated being a witness before congressional committees and in special counsel Robert B. Fiske Jr.'s probe. "This is a sensitive issue. For my own reasons, I don't want to discuss it with you at all," she said.

Almost inevitably, Mrs. Lewis' character, motives and professionalism are becoming part of the Whitewater-Madison story.

There are federal regulators who accuse her of being overzealous, of misinterpreting innocuous comments as pressure to back off her findings.

Others, including some RTC investigative officials, applaud her professionalism. "It would have been very easy for her to step away from this, to just not push hard on what was obviously an investigation with the potential to compli-

cate her life," said one. "She didn't do that. What she did do took courage. As far as I know, she just said, 'Let the chips fall.' "

Mrs. Lewis has been accused of being a leaker in the case. When she was abruptly removed from the investigation in November, some officials not directly involved said that was the reason given. She denied that, as have others close to the case. Indirect evidence released by Mr. Leach, appears to support that she was not the leaker.

Many of her findings were kept under wraps until some details were revealed last week by Mr. Leach:

• "Losses to Madison from the Whitewater account alone would easily exceed $100,000," she wrote, adding that "the end loss result from the entire scam . . . would be hundreds of thousands of dollars in what were essentially unauthorized loans."

Administration and congressional sources said that investigators eventually concluded that as much as several hundred thousand dollars in questionable expenditures were paid by Madison accounts. At least some of that money either ended up in a Whitewater account or went to pay Whitewater-related expenses, the sources said.

While some of the checks, written by Mr. McDougal, reflect apparently legitimate expenses incurred by the Whitewater project, others have not been explained.

• Kansas City investigators, including Mrs. Lewis, believed they were being taken off the case, and that it was being stalled because it was politically hot. In a Nov. 10 e-mail memo to her colleagues in Kansas City, Mrs. Lewis said, "The Powers That Be have decided that I'm better off out of the line of fire on this."

Officials said one reason that Kansas City investigators thought their work was being stalled was the decision inside the RTC to have the criminal referrals screened by Professional Liability Section lawyers, which they believed to be unusual.

RTC spokesmen in both Washington and Kansas City have refused to discuss details of how the agency handled the Madison case. But in both cities the officials have said the agency did not violate accepted procedures.

However, records show that in November 1993 a senior RTC official in Washington went to Kansas City to evaluate the referrals. Agency experts called that a "highly unusual" decision.

Mrs. Lewis wrote at the time: "Cut to the bottom line. He is coming here because he wants to be convinced that there either is or is not a very good case behind those referrals . . . and how he can best deal with a very sensitive political situation."

By that time Mrs. Lewis had filed two separate reports to federal prosecutors, one in September 1992 outlining a single criminal referral, and another in October 1993, detailing what she believed were nine possible criminal acts.

Paula Casey, a friend of President Clinton's who was named U.S. attorney in Little Rock, declined to investigate the initial referral, which reached her after a long delay. She did so about two weeks after she had received the second report with nine referrals.

Mrs. Casey later recused herself from the case. While declining to discuss specifics, she has defended her handling of the case.

In February this year, as Whitewater was building as a national news story, another RTC official from Washington visited Mrs. Lewis. April Breslaw, an RTC attorney, already had an indirect involvement in the Madison case, having overruled three subordinates to give Hillary Rodham Clinton's Rose Law Firm a Madison-related contract in 1989 that netted the firm $400,000.

The February 1994 meeting between Mrs. Lewis and Ms. Breslaw is destined to be thoroughly explored by Mr. Fiske and at congressional hearings.

Mrs. Lewis claimed in a lengthy memo written at the time that Ms. Breslaw told her that RTC "head people" were concerned about her probe and that there were "certain answers" they would be happier about because it would "get them off the hook."

When that charge was made, Ms. Breslaw "categorically denied" it. But on Friday Mr. Leach released a statement indicating that the Lewis-Breslaw meeting was at least partially taped, and the tape is "completely consistent" with Mrs. Lewis' version.

Mrs. Lewis recently took a brief vacation away from Kansas City, and at least metaphorically away from the swirling controversy of Whitewater-Madison. Upon her return, she took medical leave, seeking to beat a bad case of bronchitis. While on sick leave, she was transformed by Mr. Leach's speech on the House floor Thursday from an obscure investigator in Kansas City to a key to what could be the biggest scandal of the Clinton presidency.

Reached after she came back from the brief sojourn, a reporter asked her about a rumor she had been ordered out of town. She emphatically denied it, saying she'd left town of her own choice. But in an aside that may apply beyond the immediate context of the brief out-of-town trip, she said: "Nobody has coerced me. If anybody had, I'd be squawking loud and long."

GOP seeks hearings soon on Whitewater

By Jerry Seper
THE WASHINGTON TIMES

Republicans yesterday sought o ensure that congressional hearngs on Whitewater-Madison begin soon, as special counsel Robert B. Fiske Jr. neared the end of the first phase of his investigation into the affair linked to President Clinton.

House Minority Leader Robert H. Michel, noting that "a considerable amount of time" had passed since a March 22 resolution calling for the hearings to begin, asked House Speaker Thomas S. Foley to call for planning sessions to get under way.

"According to the resolution, we are to meet to determine the appropriate timetable, procedures and forum for appropriate congressional oversight, including hearings," Mr. Michel said in a letter. "As you know, no such meeting has taken place, despite my requests that one be held as soon as possible."

The Illinois Republican said several House committees have the "jurisdictional basis" to con- Whitewater-Madison hear- and "can clearly begin working on compiling the relevant background material" to conduct them.

"This work has not been done, nor have you given me any sign when or if appropriate investigations and public hearings are to be held," Mr. Michel said. "I'm compelled to renew my request to know when, if ever, the majority plans to investigate and report to the American people exactly what took place during the Whitewater affair."

Senate Minority Leader Bob Dole also has begun a push for hearings, saying he does not intend to wait indefinitely for them to begin. But the Kansas Republican, after a meeting this week with Senate Majority Leader George Mitchell of Maine, said he was hopeful hearing details could be worked out soon.

Mr. Foley, Washington Democrat, told reporters Tuesday that Whitewater-Madison hearings will be "considered" once Mr. Fiske indicates that the first phase of his investigation has been fully completed and will begin "when we are ly."

We have a resolution that calls for [hearings] when it is also consistent with Mr. Fiske's investigation," he said. "That is the condition that the House resolution imposed upon the hearings, so when Mr. Fiske indicates that his investigation is over, or that phase, we will consider the scheduling of hearings."

The speaker said no decisions had been made about the focus of the hearings, "but I assume we would look into the matters that relate to that portion of Mr. Fiske's investigation that had to do with" possible improper contacts between the Treasury Department and the White House over the Whitewater-Madison probe.

Mr. Foley said scheduling for any hearings would be the responsibility of the committees involved.

Whitewater-Madison hearings have been approved by both the House and the Senate. They were to begin after the leadership determined they would not jeopardize the ongoing Fiske inquiry.

On Monday, Mr. Fiske said he was nearing the end of the first phase of his investigation, although it had not yet been completed. His comments were in response to requests by the White House for permission to review Treasury Department documents relating to some aspects of the Whitewater-Madison probe.

Those documents, which the White House said it wants so it can prepare for the hearings, describe meetings between Treasury Department officers, including Deputy Treasury Secretary Roger C. Altman, and Clinton administration officials over the Resolution Trust Corp. (RTC) investigation of Madison Guaranty Savings and Loan Association.

The RTC, a Treasury Department agency, had forwarded to the Justice Department nine criminal referrals in the Madison case, suggesting possible financial improprieties involving Madison, its owner, James B. McDougal, Mr. Clinton and first lady Hillary Rodham Clinton.

The RTC-White House contacts were described by Mr. Altman as a "heads-up."

Madison failed in 1989 at a cost to taxpayers of $50 million. Mr. McDougal, his wife, Susan, and the Clintons were partners in Whitewater Development Corp., a northern Arkansas real estate venture that also eventually failed.

Madison and Mr. McDougal are the major focus of the Fiske inquiry.

Mr. Fiske said the release to the White House of the Treasury Department documents at this point of the first phase of his investigation — which includes a look into the RTC-White House contacts — would not interfere with his inquiry.

It was not certain yesterday whether Republicans, also looking to prepare for the hearings, would have access to the same documents. A Treasury Department spokeswoman said the department had not received any requests from Republicans in the House or the Senate for the records. She said if one is made, it will be reviewed by department lawyers.

Mr. Michel's office said the congressman was not sure which Treasury Department records would be available or who would get them.

Washington Times 5/19/94

I N T E R O F F I C E M E M O R A N D U M

Date: 11-Jul-1994 10:44pm EST
From: Francine Kerner
KERNER
Dept: COUNSEL
Tel No: (202) 622-1090

TO: James Cottos (COTTOS)

CC: Raisa Cesario (CESARIO)

Subject: STEINER QUESTIONS

HERE ARE MY STEINER QUESTIONS. THEY INCLUDE REFERENCES TO STEINER DIARY.

WHITE HOUSE SAYS WE TOLD THEM TUESDAY AND WEDNESDAY. THEY STILL EXPECT TO PRODUCE PEOPLE. I'M ON HOLD WITH JANE SHERBURNE EVEN AS I TYPE THIS. WE'LL SEE WHAT HAPPENS.

OGE IS ON FOR THURSDAY AT 10AM.

FRANCINE

JULY 9 TO DO LIST

[redacted] [redacted]

REDACTED

- Cooperation
  - ~~Beattie conversations?~~
    - ~~Continue to permit IG demands to interfere with preparing other Treasury witnesses?~~
      - ~~IG doesn't want one Treasury witness to know what another Treasury witness will say, but that is normal preparation for Congressional hearings~~
      - [redacted]

Redacted

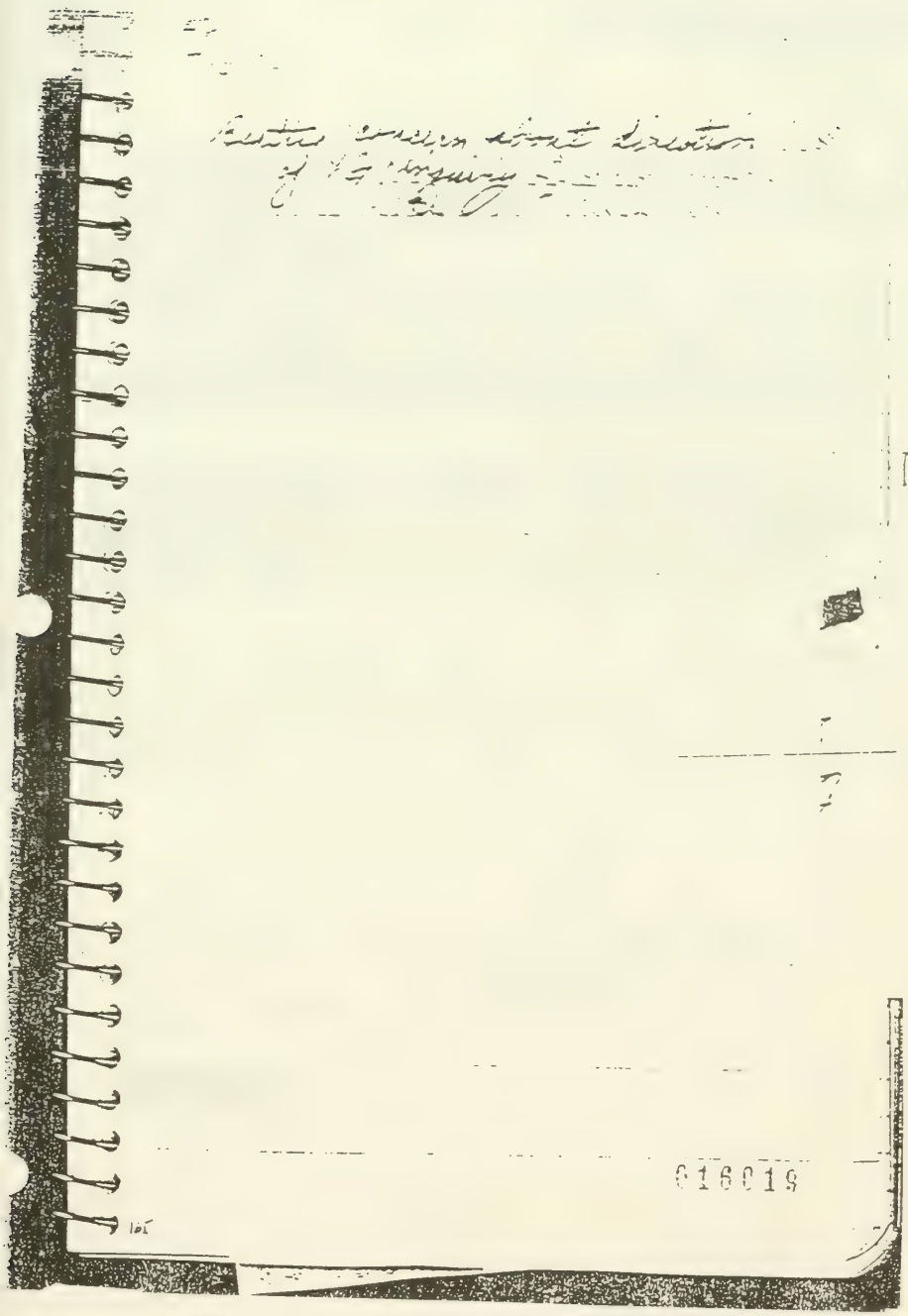
  - [redacted]the specifics:
    - ~~debrief witnesses after IG testimony~~
      - ~~Foreman already~~
      - ~~Hanson deposition today~~
      - [redacted]
      - [redacted]

Redacted

      - [redacted]
      - [redacted]
      - share IG transcripts once received/IG finished
  - [redacted]

Redacted

  - [redacted]
- How will we know whether IG and WH reports are in agreement?
  - no process in place, per FK
  - Are the girls looking at violations of ethics rules,



616019

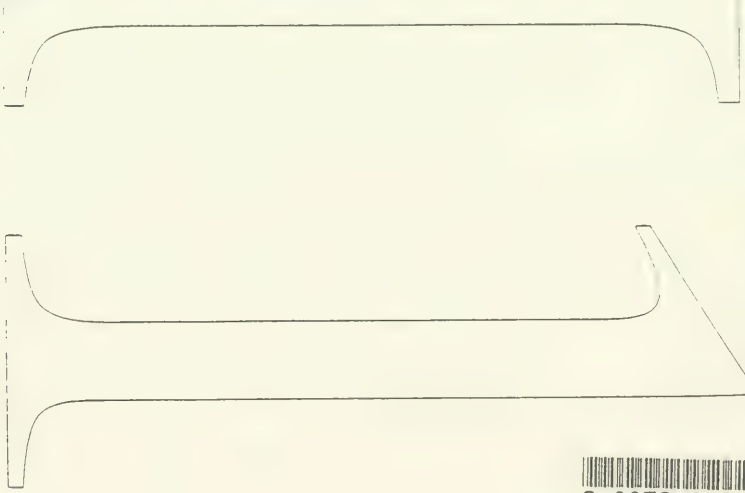
PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
DRAFT/JULY 27, 1994

Jane--

(1) I read Steiner's transcript. I've copied his description of his conversation with Ickes about Altman's statement he was thinking of stepping down. It sounds a little different from what's in our chronology at 31 and 32-33.

(2) David Dougherty at Treasury told me the RTC has not yet agreed to ~~release its transcripts~~, ~~but may do so tomorrow~~. He said they seem very touchy about the transcripts, and expressed to him some dismay that Treasury had given them to the White House. RTC's concern is that it does not want nonpublic information released that could impair its investigations. He stressed that it is important that nothing in the transcripts be made public, at least with attribution, until they are released. I told him we understood that.

This afternoon, he gave me summaries of the transcripts that he had not realized we did not have and told me that the transcripts could be given to witnesses and their counsel. I faxed the Katsanos summary (3 pp) to Bill Taylor, and corrected one statement ~~that inaccurately~~ reflected the testimony. I told Taylor's associate of Treasury's concern about not attributing information to the transcripts.



S 007913

J. William Codinha, Esquire
Special Counsel
Committee on Banking, Housing
and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Mr. Codinha:

This is in response to your letter of October 19, 1994, in which you asked about two matters on which the Secretary was asked to provide supplemental information during his August 3, 1994 testimony before the Committee.

For the first matter, you cite transcript page 67 as containing a request for "the Rules of Conduct for officials of the Department of the Treasury regarding White House contact." We previously responded to this request in the amendments to Secretary Bentsen's testimony that were submitted to the Committee. A copy of the amendment to page 67 is enclosed. The testimony as amended represents all of the information available to the Secretary that is responsive to Senator Mack's request.

The second item is a question by Senator Shelby contained on page 71 of the transcript regarding the date on which former White House Counsel Lloyd Cutler asked for copies of the transcripts of interviews taken by the Treasury Inspector General. The answer to this question is the following: "Mr. Cutler's request was first made on July 5, 1994, and renewed late in July."

I trust that this information is responsive.

Sincerely,

Robert M. McNamara, Jr.
Assistant General Counsel
(Enforcement)

Enclosure



DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

October 21, 1994

The Honorable Donald W. Riegle, Jr.
Chairman
Senate Committee on Banking,
Housing and Urban Affairs
Washington, D.C. 20510-6075

Dear Mr. Chairman:

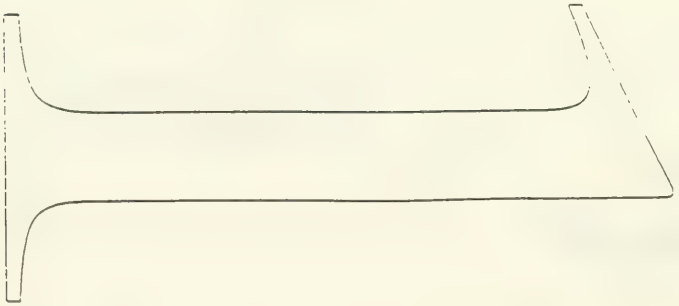
As you requested in your September 28, 1994 letters to Secretary Bentsen, Edward S. Knight and Dennis I. Foreman, we are providing the Committee with answers to Senator Bond's supplemental questions. Because the questions addressed to Secretary Bentsen required information to be gathered from various parts of the Department, the answers are provided on behalf of the Department, not Secretary Bentsen personally.

I trust that the attached answers fully respond to Senator Bond's inquiries.

Sincerely,

Michael B. Levy
Assistant Secretary
(Legislative Affairs)

Attachments



THE WHITE HOUSE

WASHINGTON

December 7, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
Richard Ben-Veniste, Minority Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Gentlemen:

This letter is in response to the Chairman's letter of December 5, 1995, seeking information regarding the telephone number (202) 628-7087. We have learned that, from February 5, 1993, through January 20, 1994, the telephone number (202) 628-7087 was an unlisted trunk line that rang on the White House switchboard, which was at the time in Room 09 of the Old Executive Office Building. The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and may have been provided to certain individuals for that purpose.

We have no records reflecting with whom the caller to that number at 11:41 p.m., EDT, on July 20, 1993, was connected. However, we understand that Bill Burton remembers receiving a call in the Chief of Staff's office from Mrs. Clinton on the evening of July 20 and speaking with her about Vincent Foster's death.

In response to the Chairman's specific suggestion in the December 5 letter that the telephone number may have been used by the White House Communications Agency (WHCA) as a secure telephone line, WHCA has confirmed that the telephone number was not assigned to it.

Please feel free to call me if you have any questions.

Sincerely yours,

Jane C. Sherburne
Special Counsel to the President

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, NOVEMBER 9, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE THE WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:08 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. I would ask our first two witnesses to stand for the purposes of having the oath administered.

[Whereupon, Lloyd Cutler and Jane Sherburne were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Mr. Cutler and Ms. Sherburne, if you have any opening remarks or statements, the Committee would be pleased to receive them at this time.

SWORN TESTIMONY OF LLOYD N. CUTLER
SPECIAL COUNSEL TO THE PRESIDENT

Mr. CUTLER. Thank you very much, Mr. Chairman.

I served as Special Counsel to the President from March 1994 until the end of September 1994. In that capacity, I conducted an investigation at the President's request into the facts relevant to certain Treasury–White House contacts in 1993 and 1994 relating to the Madison Guaranty matter, in order to determine whether any White House personnel engaged in any ethically improper conduct relating to those contacts.

I presented my findings and conclusions to the President and later to the Congress in the form of testimony I gave to the House Banking Committee on July 26 and to the Senate Banking Committee on August 5, 1994.

It's important to recall the status of the contact issue in the spring and summer of 1994. At the time I was drafted into the White House in March, Independent Counsel Robert Fiske was conducting an investigation of whether the contacts violated any criminal Federal law.

That investigation was not concluded until the end of June, when Mr. Fiske issued a very brief report stating his conclusions without any detailed findings of fact. Mr. Fiske had asked us not to commence our own witness interrogation until he concluded his investigation, and we of course complied with this request.

We and the Treasury also complied with his request to produce all relevant documents, without asserting any claim of executive privilege. By May his own investigation was sufficiently far along so that he permitted us to review the documents that the Treasury had produced to him, and shortly thereafter, to allow the Treasury to review the documents the White House had produced.

Mr. Fiske's report, published on June 30, concluded that there was no basis for alleging a violation of Federal criminal law. He expressed no conclusions as to whether some of the contacts might have violated noncriminal Federal ethics regulations applicable to Executive Branch employees.

The principal focus of my own inquiry was to determine whether any member of the White House staff had violated these ethics regulations. At about the same time, Secretary Bentsen had initiated an inquiry as to whether any Treasury employee had violated these regulations. In a press briefing I held on June 30 to comment on Mr. Fiske's report, I stated publicly that, "We will be coordinating with the Treasury with respect to interviews and factual information on the Treasury side and the White House side." I am aware, Mr. Chairman, that certain concerns have been voiced about the conduct of my investigation. I submit to you that these concerns are utterly groundless as the facts set forth below make clear.

My principal assignment was to investigate the facts relating to the White House–Treasury contacts thoroughly and professionally; to pass judgment with care and integrity on the ethical propriety of the activities in question; to report my findings accurately and completely to the President and then the Congress; and to recommend corrective measures as appropriate. That is what I did with the help of a supporting team I personally selected and supervised.

We did not cover up any fact concerning any person. There is no factual basis for any insinuation to the contrary about me, Ms. Sherburne, or any other member of my team.

To perform a thorough and complete factual investigation, we quite obviously needed to probe the recollections of every White House and Treasury participant in the alleged contacts. We planned to interrogate the White House participants ourselves, but we also needed to know what the Treasury and RTC participants had said, just as the Treasury and RTC investigators needed to know what the White House participants said.

We could have insisted on interrogating the Treasury and RTC witnesses ourselves. But we knew that Secretary Bentsen had requested the Office of Government Ethics to conduct a parallel inquiry into whether Treasury personnel had acted improperly, and that because OGE does not have factfinding capabilities of its own, the Treasury and RTC Inspectors General were going to interrogate Treasury and RTC witnesses on behalf of OGE.

We also knew that they would want to interrogate all the White House participants in the contacts as well. We also knew that we and the Treasury would be under great time pressure; indeed, it

turned out we had only 26 days to complete our investigation between the time Mr. Fiske gave us permission to go forward on June 30 and the scheduled date of my House Committee testimony, July 26. We also wanted to avoid imposing unduly on the Treasury and RTC witnesses who were being subjected along with our own White House witnesses to multiple interrogation sessions, not only by the Inspectors General, but also by this Committee and by the House Committee.

So it seemed to make eminent sense for us to cooperate with the Treasury investigation by making White House personnel available to the Inspectors General, by foregoing our own interrogation of most of the Treasury and all of the RTC employees, and by relying instead on the IG depositions of the Treasury and RTC personnel.

In the light of these circumstances, Secretary Bentsen and I reached a general agreement during May and June 1994 that the Treasury and the White House would coordinate their efforts and cooperate with each other as I announced publicly in that press conference on June 30. My team and Secretary Bentsen's staff thereafter agreed, late in June and early in July, that Treasury investigators would have direct access to White House witnesses, and we understood that we would have access to the transcripts of the IG depositions.

In my June 30 press briefing, I made the facts of this cooperation fully public. If Secretary Bentsen and I were supposed secret coconspirators as has been alleged, it was certainly inept on our part to tell the world what we were planning to do.

This kind of cooperation between the Treasury and the White House made all the practical sense in the world to me then, and it still does today. The criminal investigation I remind you was over with no criminal charge brought. The remaining questions were ethical, and it was my responsibility to answer them as to the White House participants, just as it was Secretary Bentsen's responsibility to answer as to the Treasury and RTC participants. As I said, we could have insisted on interviewing each of the Treasury and RTC witnesses ourselves. This cooperation within the Executive Branch saved work and time, and compromised absolutely no ethical principle.

Secretary Bentsen and the Treasury Inspector General agreed, as reflected in Mr. Cesca's letter to Congressman Wolf of August 17, 1994. In this Committee's hearings, Senator D'Amato has commented several times on the reasonableness of this arrangement under the circumstances; first on August 3, 1994 when this issue first arose, and again this past Tuesday and Wednesday, when he said he had no problem with Treasury's delivery of the transcripts to us so long as Treasury's condition was observed. As in fact I will show it was.

Treasury's delivery of the IG transcripts to my team in fact did not interfere with or compromise the Treasury/Office of Government Ethics inquiry or the Congressional Committee inquiries in any way. Indeed, all of the RTC Inspector General and Treasury Inspector General witnesses who testified earlier this week confirmed that they had no basis for believing that their investigations had in fact been compromised.

The heart of the matter now before the Committee seems to be an allegation that my staff used the Inspector General transcripts that Treasury delivered to us on July 23 to prepare White House witnesses to testify before Congress, in alleged violation of a condition on their use imposed by the Treasury in a letter of transmittal signed by Mr. McHale. The text of that condition is in my prepared statement.

The short and complete answer is that we did not—I repeat, did not—use these Inspector General transcripts or their substance in any witness preparation sessions. We scrupulously adhered to the Treasury condition.

We did not show the Inspector General transcripts to any White House witness or potential witness, or to any witness' lawyer or representative, nor did we prepare any summary of any transcript for that purpose.

On July 27, Sharon Conaway, a member of my investigating team, asked a Treasury lawyer whether the Treasury restrictions on the use of transcripts had been lifted, and whether she could send a transcript of an RTC press official to counsel for a White House press official, who in the end was never called to testify before this Committee. The Treasury lawyer answered no to both questions, but said there was a summary of the transcript which did not contain sensitive information, and he furnished her with a copy of the summary to send instead. I did not know these facts at the time, but I believe Ms. Conaway's authorized delivery of the summary was entirely proper.

We used the Inspector General transcripts only to verify the factual accuracy of my report and my Congressional testimony. The Treasury had expressly permitted us to make this kind of use of the Inspector General transcripts, and as I've previously noted, Chairman D'Amato has said several times he had no concern about this kind of use of the transcripts.

Before Mr. McHale sent us the IG transcripts on July 23, counsel for certain witnesses whom the Inspectors General had deposed had received copies from the Inspectors General as I believe you heard yesterday of their own client's transcript and had given us copies of these transcripts. Even though we understood we could make unrestricted use of these copies, which Mr. McHale knew we had, and the documents you've handed me this morning indicate that other Treasury people knew we had, we did not in fact show them, or disclose their substance, to any other witness or potential witness or private counsel for that witness.

I understand that statements attributed to me in Associated Press news stories of May 4 and 8, 1995, could be read to suggest that we did use what we had learned from the IG transcripts to question or prepare White House witnesses before they appeared before this Committee. The simple fact is that we did not do so. These press reports are mistaken to the extent they suggest I said we had done so. I do not blame the reporter, because the fault may be more mine than his.

I spoke to the reporter in May 1995, over 9 months after the events in question. When I spoke to the reporter, he did not mention and I did not recall that the Treasury had not delivered the Inspector General transcripts to us until July 23, and I was re-

sponding on the mistaken assumption that we had received these transcripts at an earlier time before, rather than after, we had interviewed the members of the White House staff involved in the contacts.

What I was trying to explain to the reporter was that, if we in fact had information from the Inspector General transcripts in our heads, that the testimony of others differed from what a White House staffer was telling us, it would have been entirely appropriate to confront the staffer with the fact that there was such a difference, in order to test the accuracy and veracity of what the staffer was saying, and to refresh his recollection. It is a common and completely ethical practice for a lawyer investigating facts, as we were doing, especially in a civil rather than criminal context, to challenge or check one witness' recollection of events by alerting him to the fact that others have a different recollection about the same events.

I explained to the reporter that such probing, had it occurred here, would not have violated the Treasury's condition on our use of the IG transcripts that Treasury had sent to us, because we would not have been sharing the text of the transcripts or their substance with any future witness before the Inspectors General or the Committee. To the contrary, such use would in my view have been expressly contemplated by the language of the Treasury conditions because it would have been part of my efforts to learn the facts for inclusion in my report and my testimony about the report to this Committee and to the House Committee.

But all of this, I would submit to you, is academic. We did not in fact use the IG transcripts for that or any other purpose with any of the witnesses before they testified to the Inspectors General or to the Senate and House Committees.

During my deposition last Monday, the Committee's staff raised a question about my meeting on the evening of July 24th, 2 days before I was to testify about my report to the House Banking Committee, with the private lawyers for the White House staffers involved in the contacts, to let them review the current draft of my report and allow them to comment on my proposed findings and conclusions concerning their clients. We had only one purpose in doing so: To ensure the accuracy and the fairness of my findings and conclusions. It is good practice for lawyers conducting internal corporate and other civil noncriminal investigations to receive comments on their proposed findings from the affected people before submitting their final reports.

Even if the draft of my testimony and the attached chronology of events that these lawyers reviewed had already been cross-checked with the Inspectors General transcripts and corrected where appropriate, this would not have compromised the integrity of the Inspectors General's investigation or have violated our agreement with the Treasury, for one simple reason. The Inspectors General had already taken all their depositions, except for Mr. Ludwig. The draft was merely a preview of the public testimony I would give 2 days later on July 26 before any of the White House personnel were to testify before the Congressional Committees. In fact, I believe the final revision that was cross-checked against the Inspector General transcripts was not made until July 25, the day

after we met with these lawyers. So the transcripts—I'm sorry, the draft report they reviewed might not yet have been fully cross-checked with the transcripts.

Although we did not share these Inspector General transcripts or their substance in any witness preparation session, we did meet with White House witnesses and their counsel to help them prepare to give accurate and truthful testimony.

I see no ethical problem with this. As a lawyer representing the institutional interests of the Presidency, I believe I had a responsibility not only to make a full investigation and report, but also to make sure that White House personnel testified accurately and candidly before the two Congressional Committees, and that their opening statements were appropriate in tone and manner.

As White House Counsel, I also felt I had a responsibility to assist White House personnel in responding to anything that I would regard as unwarranted and unfair political attacks on them that went far beyond the findings and criticisms, and there were many criticisms of these personnel, contained in my report.

From the outset of my internal review, we have exercised great care to avoid receiving from Treasury or the RTC any information relating to the underlying Madison criminal referrals. When Independent Counsel Fiske authorized us to review Treasury documents produced to him, we made it clear in our written request to the Treasury that we did not want to see any documents that revealed information relating to the underlying Madison investigation. When my staff reviewed the documents that the Treasury had submitted, we again made it plain that we did not wish to review any document that Treasury or the RTC believed might disclose information relating to the Madison investigation; and we did not review any such documents.

Likewise, when we sought the Inspector General transcripts, we did not believe, and had no reason to believe, that those transcripts would contain any information relating to the underlying criminal referrals. The subject matter that Secretary Bentsen had asked the Office of Government Ethics to investigate was the propriety of the White House–Treasury contacts. We were truly surprised to learn, after we had received the Inspector General transcripts on July 23, that the RTC believed those transcripts contained sensitive information relating to the underlying referrals.

In any event, once we learned of the RTC's concern that the transcripts might contain such information, we took great care not to disclose in my testimony or otherwise the information in question, either to the White House witnesses or to anyone else. Indeed, I never personally reviewed those transcripts and am unaware to this day of any such sensitive information.

After Ms. Sherburne delivers a brief statement, we would both be prepared to answer any questions the Committee may have.

The CHAIRMAN. Ms. Sherburne.

SWORN TESTIMONY OF JANE C. SHERBURNE
SPECIAL ASSOCIATE COUNSEL TO THE PRESIDENT

Ms. SHERBURNE. Mr. Chairman, Members of the Committee, I am Jane Sherburne. I served as Special Associate Counsel to the President from April 1994 until October 1994. During this period,

I worked for Lloyd Cutler and participated in conducting the internal review Mr. Cutler has just described. I am currently serving as Special Counsel to the President, and my responsibilities, as you know, relate to the so-called Whitewater matter. I will add just two points to what Mr. Cutler said.

I want to reiterate what Mr. Cutler has said about our use of the IG transcripts. We did not use them in any way in connection with any witness preparation efforts. We did not show the transcripts to any witness, any witness' lawyer, or anyone else. What I have just said applies both to the copies of the IG transcripts that Treasury delivered to us on July 23 and to other copies of the same transcripts that counsel for some of the witnesses had given to the White House. In short, we scrupulously complied with the Treasury's restrictions on the use of the IG transcripts.

On July 27, 1994, I asked Sharon Conaway, a lawyer on our team, to ask Treasury whether it had lifted its condition on our use of the IG transcripts so that we could send the transcript of Mr. Katsanos' IG testimony to counsel for Ms. Caputo. Ms. Conaway no doubt has the best recollection of these events, and I understand she has given a sworn deposition to this Committee.

I recall that Sharon Conaway informed me that she spoke with David Dougherty, a lawyer in the General Counsel's Office at Treasury. He advised her that Treasury had not lifted the restrictions on the transcripts themselves, but she told me that Treasury had a form of summary that it evidently believed did not raise the same concerns that caused it to restrict the use of the underlying transcripts. And that there accordingly were no restrictions on the dissemination of these summaries.

Ms. Conaway told me that Mr. Dougherty offered to give these summaries to our review team, and that he did so. She also told me that, based on Mr. Dougherty's advice, she sent the summary of Mr. Katsanos' IG deposition to Ms. Caputo's lawyer. We did not give this or any other summary to anyone else.

I would be pleased to respond to any questions you may have.

Thank you.

The CHAIRMAN. Thank you very much.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, could I take care of one piece of business before we—or perhaps you're going to reference it.

The CHAIRMAN. I will reference it and I gave a copy of the letter that Stephen Potts and Jane Ley—Stephen Potts of the Office of Government Ethics—sent to the Chairman and the Ranking Member in which Mr. Potts clarifies his testimony before the Committee.

It says very definitely that our response to the earlier questions remain correct. "OGE did not," and I quote, and he puts quotes, "'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred by any White House official." I made the entire letter available to Mr. Cutler. I've just seen it this morning. Apparently it came in last evening and Counsel has received it.

I will get to that immediately because I found that troubling in our hearing in 1994 because Mr. Cutler continually asserted that

the Office of Government Ethics had concluded that there was no ethical violations. There was some questioning, and we'll point to it in the record in which he said well, this was an informal concurrence.

I raised that issue repeatedly, and yesterday, the witnesses were quite clear that there was no concurrence. I will tell you what is upsetting. Because witness after witness that appeared from the White House used that mythical concurrence as a wand, that anything they did had been checked upon, and that indeed, the Office of Government Ethics had given them a clean bill of health. I saw that in every newspaper account.

Every witness from the White House, literally every one of them, had the same line. Oh, I have been cleared by the Office of Government Ethics. So let me go back to this. Mr. Cutler——

Senator SARBANES. Well, Mr. Chairman, I think in all fairness, we ought to read the letter, the entire letter into the record.

The CHAIRMAN. The letter will be placed in the record.

Senator SARBANES. No. Since you've quoted from it and taken the last paragraph, I think we ought to——

The CHAIRMAN. The Senator will have an opportunity on his time to read the entire letter into the record, and if I have time left over, I will do that, but I'm going to pursue my line of questioning, and the Senator on his time can pursue his line.

Senator SARBANES. All I say, Mr. Chairman, is this is a very blatant example of twisting a letter and I——

The CHAIRMAN. I resent your characterization and you have a right to make any assertion that you deem appropriate, and I think that your contention of a blatant twisting is absolutely inaccurate, and I intend to go through this without interruption and I will give to my colleague that same opportunity. Every Member is entitled to that.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, can I make a suggestion?

The CHAIRMAN. Certainly.

Senator DODD. Without in any way cutting into your time or Majority's side on this, couldn't we just take 5 minutes and maybe do that just to have it on the record without cutting into your time.

The CHAIRMAN. The letter is deemed to be part of the record. The Committee received this last evening and it is addressed to myself. This will not be charged to anyone's time.

To myself and to Senator Sarbanes—I don't know if other Members of the Committee. Has it been distributed?

Dear Chairman D'Amato and Senator Sarbanes:

This afternoon while we were testifying, Mr. Giuffra's last question involved his reading a statement from Mr. Cutler from a 1994 Committee hearing record and asking if we believe Mr. Cutler's statement was correct. We both in essence answered that it was not. Immediately after our testimony, individuals from our office asked if we had heard that the last question was about recusal and not about the more encompassing question we had answered earlier. Neither of us recognized that the question had changed to the more narrow issue of recusal discussions and, therefore, we would like to submit this letter as a clarification to our testimony.

We have secured a copy of the Committee record from which Mr. Giuffra was reading and we believe that the passage he read was as follows:

The Office of Government Ethics has informally confirmed my conclusion that no White House official violated any ethical standards with respect to this recusal issue.

Jane Ley and Leslie Wilcox in their discussions with Jane Sherburne and Sharon Conaway on the afternoon of July 21 did indicate that, based upon their review of the transcripts of all the Treasury and White House officials with whom Mr. Altman had spoken about his recusal concerns, they did not see that any standard of conduct had been violated in those discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong.

We're talking about the recusal issue.

Stephen Potts did not have any discussions with the White House about the recusal issue.

We are sorry that we did not recognize——

They are clarifying the question as to whether there was discussion about recusal and whether there was any ethical misconduct, and they said they didn't see any. That was the Chairman's interpretation. The letter speaks for itself.

We are sorry that we did not recognize that Mr. Giuffra's question had changed from the earlier question——

And that was the question that we had all heard.

Of whether OGE had informally concurred that no individual ethical standards were violated by White House officials to the more narrow question of recusal. Our response to the earlier question remains correct; OGE did not "informally concur" in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official.

We would appreciate it if you would make this letter part of the hearing record.

It is part of the record and I have given this to Mr. Cutler, and I will now get into it.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. I thank the Senator. It was not the Senator's intent to obfuscate in any way the facts, but we're going right to it because, Mr. Cutler, I am troubled and I am concerned. I raised this issue back in the summer of 1994 with respect to the Treasury–White House contacts and you repeatedly asserted that the report of the nonpartisan Office of Government Ethics vindicated the conduct of White House officials. You told us repeatedly that the report cleared the White House of any official wrongdoing.

As I have indicated to you, witness after witness from the White House used that report and said well, we didn't do anything wrong. OGE said that.

Now, during the 1994 hearings, I pointed out that the OGE report did not—I didn't see any determination that the standards were not violated. And indeed yesterday, very specifically, Mr. Potts said we did not look at this, that was not part of our investigation. Ours was to review the findings of the IG relating to the Treasury and not conduct by White House officials.

The report expressly stated at page 2 that, "Our analysis"—this is the OGE report—"is not intended to cover, nor should it in any way reflect upon, the actions of individuals who are employed by the White House." In fact the OGE report stated at page 3, and I'll read that, "Many of the contacts detailed in the report are troubling."

Mr. Cutler, I'm troubled. Now, you testified that OGE had, "informally concurred," in your conclusions, based on your own internal review, that no violation of any ethical standards occurred by

any White House official. This testimony is found at page 735 of the Committee's hearings. This is your testimony.

I then asked you, what is the informal concurrence by the OGE. You responded at page 743 of the hearing record—and if you want that, I will make it available. Would you make that available?

At 743, the hearing record reads as follows——

Mr. CUTLER. I have it, Mr. Chairman.

The CHAIRMAN. "We gave"—this is you—"the OGE a draft of my factual statement which was attached to my House statement and they went over that, and they went over my actual statement itself and approved the words used in that statement about informally concurring." I have to inform you that your testimony in the summer of 1994 was very clearly contradicted here yesterday by Mr. Potts and Ms. Ley.

Mr. CUTLER. I respectfully disagree.

The CHAIRMAN. I'll give you a chance—let me finish.

Yesterday, this Committee heard from Stephen Potts and Jane Ley. Both Mr. Potts and Ms. Ley testified that the Office of Government Ethics did not, and they reaffirmed it in today's letter, did not informally concur in a conclusion that no violations of any ethical standards occurred by any White House official. Now you may have made that, but OGE has indicated very clearly that they did not.

To further clarify, Mr. Potts and Ms. Ley sent Senator Sarbanes and myself the letter, last evening, in which they repeated, "OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred."

I simply can't square the testimony that you gave in August 1994 with OGE's testimony of yesterday, and it's clear to me that they did not bless your ethics review or in any way conclude that the White House officials did not violate ethical standards.

So we come back to the question that I raised last summer. That is, what was the basis for your statement about OGE informally concurring in your conclusion, recognizing that just about every White House official that came before us, with impunity, say listen, we were cleared of anything. There's nothing wrong. We have OGE. I remember Senator Bennett raising that same question, that yeah, they just raised this and said here, don't bother us, your questions—you're trifling with us because we've been cleared.

So what was the basis of this?

Mr. CUTLER. May I respond, Mr. Chairman?

The CHAIRMAN. Yes, I would appreciate it.

Mr. CUTLER. We began, as you know, with Secretary Bentsen having requested the Office of Government Ethics to conduct an inquiry which, because they had no fact-finding capability of their own, was eventually done by the Treasury and the RTC Inspectors General so that OGE could issue a report as to whether the Treasury employees, as you say, and the RTC employees had violated any ethical standard. We, ourselves, had the question to resolve of whether any White House employees involved on the other side of the coin of the very same contacts had violated any ethical standard.

We met with Mr. Potts, Ms. Ley, and Ms. Wilcox, and asked them if they would be able to give us an opinion on a report based

on our findings of fact as to the White House employees. They said because of the press of time they could not do that, they were committed to do the Treasury one and that's all they could do. But they did agree to consult with us about the accuracy of our interpretation of the ethical regulations they themselves had issued on the basis of the facts relating to the White House employees as we had found those facts, I and my investigating team.

We made oral presentations of the facts to Ms. Ley, and I believe to Ms. Wilcox. They commented on them. We then submitted drafts of my final report to Ms. Ley and she commented on those. We asked if we could say that they concurred in our reading of the ethical regulations they had written based on the facts I had found, I and my team had found, not they had found but I had found, as to the White House employees. They demurred to that but Ms. Ley did agree, as she testified yesterday, we could use a term such as "informally concurred" or "informally agreed." She testified to that yesterday.

Now, there were three different kinds of issues as to which we wanted their opinion. The first was as to whether it was, on the recusal issue, whether it was appropriate for White House employees to have advised Mr. Altman relating to the recusal issue. And on that, they agreed we could use the term "informally concurred," which is made clear in the clarification letter of yesterday.

We also asked if we could use—note that they agreed with our interpretation of the regulations relating to the so-called heads-up issue, the mere passage of information if you did not have any personal, financial, or political interest that you were serving. They agreed with that interpretation, and a sentence to that effect is on page 6 of my original report to the House. If I may read it, I will, and I don't think any objection has been made to this.

"The Office of Government Ethics, the agency charged with interpreting and applying the standards of conduct, agrees that the receipt of such information," that is heads-up information, "by White House officials if not then used to furnish their own"—"further their own or another's private interest does not violate the standards. On the basis of my review," that is my factual findings, "the information was not used for such a purpose."

Then, and I think this is where the controversy arises, a bit later in my July 26 report, the testimony that I gave to the House Committee, I was dealing with the recusal issue, and I said, this one I think they also have agreed in: "The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue."

Now, I may have gone too far when I testified before this Committee on August 5, a week or two later——

The CHAIRMAN. Well, that's the Committee we're talking about.

Mr. CUTLER. That is correct. When I said that the Office of Government Ethics has informally concurred that they do not think any White House official has violated these ethical standards, but I would remind you that we never heard any objection from the Office of Government Ethics about that, that it was essentially the same as what was in my July 26 report. Between July 26 and August 5, we never heard any objection about that.

I believe I made clear, even in my August testimony, that it was on the basis of my factual findings, which they did not necessarily accept, on the basis of my factual findings that their interpretation of their own regulations as applied to my factual findings would be the same as mine.

Now I might add, that at some time in September, I went up, at Mr. Potts' request, to make a talk to all the Government Ethics officers in the Executive Branch in which I referred to this issue, that is the investigation I had had to make. I thanked the Office of Government Ethics for their assistance. I described what they had done and why they couldn't give us a formal report.

I sat next to Mr. Potts for an hour or an hour and a half and he never indicated that anything in either my July 26 or August 5 report was objectionable to him.

The CHAIRMAN. The fact that he did not volunteer that does not square with——

Mr. CUTLER. Of course not, but the words "informally concurred" were expressly agreed to by Ms. Ley, certainly in some context, and I by——

The CHAIRMAN. In a very——

Mr. CUTLER. —responding to you in give and take in testimony.

The CHAIRMAN. Mr. Cutler, we spent a great deal of time and I'll send you—and I'm going to ask you to refer to the testimony—we spent a great deal of time because this was troubling to the Senator at that point in time, and I raised it. I said nowhere do I see an informal concurrence in the OGE's report.

You went on to say we gave them a draft of my factual statement which was attached to my House statement and they went over this and went over my factual statement and approved the langugage in the statement about informally concurring. We are now talking about as it relates to access of White House officials.

Then you say to me I've reached the same conclusion as to the White House officials and based on the facts as I reported them to the nonpartisan Office of Government Ethics, that office has informally concurred.

Quite clearly, that is not what Mr. Potts or Ms. Ley indicated and they told us quite clearly that besides the issue of recusal, that narrow issue which they did make a finding, our response to the earlier question remains correct. OGE did not—you have this letter?

Mr. CUTLER. We may have a difference in——

The CHAIRMAN. No, this is the one of November 8.

Mr. CUTLER. Yes, we have it.

The CHAIRMAN. Would you look at page 2?

Mr. CUTLER. I think we have a different numbering system but I'm reading the same thing.

The CHAIRMAN. It says Office of Government Ethics. We just—I asked someone to make it available to you. Do you have it there?

Mr. CUTLER. I have it.

The CHAIRMAN. OK. Would you look at the second page?

Mr. CUTLER. Yes. I think it's worthwhile starting from the top of that page.

The CHAIRMAN. Would you read it?

Mr. CUTLER. It reads:

We are sorry that we did not recognize that Mr. Giuffra's question had changed from the earlier question of whether OGE had informally concurred that no individual ethical standards were violated by White House officials to the more narrow question of recusal.

The CHAIRMAN. Right. So that covers the point that you raised. Now, would you continue?

Mr. CUTLER. Continuing:

Our response to the earlier question remains correct; OGE did not "informally concur" in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official.

The CHAIRMAN. We would appreciate it if——

Mr. CUTLER. We would appreciate it if you would make this letter a part of the record.

The CHAIRMAN. Who is it signed by?

Mr. CUTLER. It is signed by Mr. Potts and Ms. Ley.

The CHAIRMAN. Counsel.

Mr. CHERTOFF. Mr. Cutler——

Mr. CUTLER. I need to make one further response. You say that all they had—the only subjects on which they had cleared us to say that they informally concurred was the issue of recusal.

The CHAIRMAN. No, I'm saying——

Mr. CUTLER. I believe they had cleared us on another subject which was the heads-up, the passage of information——

The CHAIRMAN. They testified to that yesterday.

Mr. CUTLER. —they did clear us on that as well.

The CHAIRMAN. But Mr. Cutler——

Mr. CUTLER. And here——

The CHAIRMAN. —I suggest to you that, when the White House Counsel and you say that we have been informally—we being the White House—White House officials have the blessing of the Office of Government Ethics, and then almost every White House official relies on it, that was just not accurate.

Mr. CUTLER. I——

The CHAIRMAN. You are telling me——

Mr. CUTLER. May I finish my response, Senator.

The CHAIRMAN. Certainly.

Mr. CUTLER. What I said in my testimony before you on August 5 was that the OGE had reviewed the factual findings of the Treasury Inspector General and issued its formal opinion concurring that no violation of any ethical standard—these are the so-called standards of ethical conduct for the Executive Branch—occurred by any current Treasury or RTC official.

Then I said, I have reached the same conclusion as to the White House officials, and based on the facts as I reported them to this nonpartisan Office of Government Ethics, that office has informally concurred. Now that may be where I may have transgressed.

The CHAIRMAN. If you go down two sentences later, because this comes up, same page, you say——

Mr. CUTLER. "The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal." That they accept. They agree with that.

Mr. CHERTOFF. But Mr. Cutler, you agree that the statement you made, "I have reached the same conclusion and reported it to the

Office of Government Ethics and that office has informally concurred," you agree that that was incorrect?

Mr. CUTLER. I don't agree that that was incorrect. I said that's where I may have transgressed [1] because——

Mr. CHERTOFF. They didn't say it.

Mr. CUTLER. What you are looking at are two sides of a coin; with respect to each contact, there is a White House official and there is a Treasury official. With respect to each contact, there is the same standard, the regulation written by the Office of Government Ethics. They interpreted it to say that the Treasury official involved in that contact had not violated the standard.

Mr. CHERTOFF. The reason they did that——

Mr. CUTLER. It was fair I think for me to conclude based on my facts that the same principle would apply as to the White House official engaged in the same contacts. It was the heads and the tails of the same issue.

Mr. CHERTOFF. Isn't it a fact, Mr. Cutler, that the difference between the two is that whether information was properly used depends upon the intent of the person who is handling it. Therefore, when the Office of Government Ethics passed on the issue of the Treasury officials and whether they had violated the standards, they explicitly did it based upon their understanding of the intent of the officials.

They were not allowed—we had this yesterday. They were specifically prohibited by your office from getting into the question of whether White House people, once they received the information, misused the information. That was specifically beyond the scope of their inquiry. That was supposed to be your inquiry.

Mr. CUTLER. That was my inquiry, and I say that based on my facts.

Mr. CHERTOFF. So as——

Mr. CUTLER. My findings.

Mr. CHERTOFF. —so the Office of Government Ethics didn't have a clue about the intent of the White House actors. Mr. Potts has come up here and said that the statement you made here about an informal concurrence as to the White House was simply incorrect.

I must ask you this, Mr. Cutler. When you made this statement where you may have transgressed in the give and take, wasn't the statement made in the context of your prepared testimony?

Mr. CUTLER. It appeared in my prepared testimony for August 5, that is correct.

Mr. CHERTOFF. Did you not know from your preparation and your discussions with the witnesses that Mr. Stephanopoulos and Mr. Ickes and Mr. Podesta and everybody else was going to come up here and hold up the Office of Government Ethics and say, in effect, to the Committee you have nothing to look at, we've been cleared by the Office of Government Ethics. You knew that coming into this hearing last year; correct?

Mr. CUTLER. I don't understand the point of that question. I'm responsible for what I said. I can't be responsible for an enlargement of what I said by anyone else. I confess to an ambiguity for something they could misread in what I said, but I find it very

[1] See additional material supplied for the record.

strange that between August 5, 1994 and November whatever it is in 1995, no one from the Office of Government Ethics had ever raised that issue with me——

The CHAIRMAN. Well, you know something?

Mr. CUTLER. —or frequently.

The CHAIRMAN. I don't find it strange. I found it refreshing that at least somebody when asked, and was in a very embarrassing position, given that the White House and White House Counsel makes these findings and they had worked with you rather closely, he's not going to volunteer that that is not the case. I don't think so. I don't find it strange at all.

But when you put the question to him directly, did you have an informal agreement that you found no violation of ethical standards by White House officials, he clearly said that was not the case. We didn't have—and I have to tell you when Mr. Ickes and others come before this Committee you have to know that they were going to rely on the findings of the counsel who said that indeed not only did he find nothing inappropriate, but the Office of Government Ethics found no violations of ethical standards by any White House official.

The fact is they did not and the fact is you'll find in all of the press releases and all of the reports that what you did is like getting the Good Housekeeping seal of approval and it was pirated. It really didn't get that.

Mr. CUTLER. Did anyone ask yesterday whether to this day they find any violation of those ethical standards?

The CHAIRMAN. Is there any investigation taking place with respect to the Office of Government Ethics that is being conducted? Were they permitted to conduct an investigation, did that take place? I think that's a rather disingenuous question.

Mr. CUTLER. They were fully familiar with my findings.

The CHAIRMAN. And they——

Mr. CUTLER. Their own report notes my findings and finds at the very end that the Treasury and RTC Inspectors General had overlooked two contacts which were reported in my report, and they pass on those. They say with respect to those also, there was no violation of ethical standards.

Mr. CHERTOFF. Let me ask you this, Ms. Sherburne, is it not correct that the Treasury Inspector General personnel who wanted to interview or depose White House people were expressly told not to go into the question of what any White House person who received information did with that information within the White House? Wasn't that put off limits?

Ms. SHERBURNE. We had an understanding that the RTC and the Treasury Inspectors General were reviewing the conduct of Treasury officials for Secretary Bentsen's benefit, and that the President, and through the Chief of Staff, Mack McLarty, had asked Mr. Cutler to review White House conduct.

So implicit in that understanding and made explicit at some point was that they would be—the IG's would be inquiring about RTC and Treasury conduct, not about what the White House did once it received the information from White House and Treasury—from Treasury and RTC officials.

The CHAIRMAN. I want to ask one more question before Counsel continues. Mr. Cutler, you saw the letter from Mr. Potts and Jane Ley. I'm going to read it again: "Our response"—the last sentence—"Our response to the earlier question remains correct; OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred by any White House official." Are they correct or incorrect? Are you saying that they're wrong? You disagree with them?

Mr. CUTLER. Well, I say that my statement before you, I have reached the same conclusions as to the White House officials and based on the facts as I reported them to this nonpartisan Office of Government Ethics, that office has informally concurred.

The question before us was does a given state of facts violate an ethical regulation. If it didn't violate that ethical regulation as to the Treasury employee involved, then on the basis of my state of facts which included findings that there was no improper motive, et cetera, that you referred to Mr. Chertoff, it could not have violated those regulations——

The CHAIRMAN. They did not make this finding, did they, you did? You made this conclusion?

Mr. CUTLER. I made that very clear in my statement, based on my findings of fact.

The CHAIRMAN. No, you said the Office of Government Ethics and the office has informally concurred.

Mr. CUTLER. Based on the facts as I reported them to the OGE.

The CHAIRMAN. Not with respect to conduct of White House officials, they did not. Mr. Cutler, I'm asking you, did they concur with respect to the conduct of White House officials? Did they say there were no ethical violations? Did they say that?

Mr. CUTLER. What this means to say is——

The CHAIRMAN. What this means to say is the report that you made but not that the Office of Government Ethics concurred. That's your statement.

Mr. CUTLER. The statement is——

Senator SARBANES. Mr. Cutler, let Mr. D'Amato do all his explosions and you'll get a chance then to respond in a calm and rational way. I think we'll probably advance the hearing better that way.

The CHAIRMAN. I hope that the Ranking Member would permit the Chairman to attempt to get the facts which is what I am attempting to do.

I have not referred to my colleague in any way other than in a respectful manner, and I don't think that when we engage in the kind of thing—now this is the second time today and I know that these hearings can become a little heated and drag on, but I don't think it helps us.

You will have an opportunity to make your points. Let's do it and let's not engage in personalities.

Senator SARBANES. Well, Mr. Chairman, I just don't think you ought to be up here and shouting at the witness.

The CHAIRMAN. I don't think you should be characterizing my actions and I think you're mischaracterizing.

Senator SARBANES. Your actions speak for themselves. They're on the record.

The CHAIRMAN. Let that take place.

Senator SARBANES. I was making a suggestion to Mr. Cutler as to how to deal with this matter which is to let you go ahead and finish and then give his response.

The CHAIRMAN. Mr. Cutler doesn't need your coaching; I can assure you.

Senator SARBANES. That's for sure. I agree with that.

Mr. CUTLER. I'm going to take his advice.

The CHAIRMAN. The fact of the matter is, Mr. Cutler, that the Office of Government Ethics and Mr. Potts have clearly indicated that they did not give you any formal or informal conclusion, one, that you made to this Committee that there were no violations of ethical standards by any of the White House officials. You waived that report. You made that report and all of the witnesses relied upon that and used that to excuse themselves from any questions that were raised. That's troubling and that's the problem.

Mr. CUTLER. Well, Mr. Chairman, what the Office of Government Ethics does is to give an opinion as to the meaning of its regulations, its ethical regulations on the basis of a statement of facts received from someone. I think I made very clear in this statement that's under attack that the statement of facts was supplied by me. It was my statement of facts about the White House people, including their motives, which Mr. Chertoff referred to.

The regulations are the regulations. Based on a statement of facts an opinion is given. They had no time to give us a formal opinion as to the meaning of their regulations, but they allowed us to say, or at least so I believed, that they informally concurred in our reading of their regulations as applied to our version of the facts.

They were not taking responsibility for our version of the facts, but based on our version of the facts, we understood them to mean that that would not involve a violation of the regulations. We had extended discussions with them about the meaning of the regulations as applied to our particular findings of fact, which perhaps Ms. Sherburne could expand on.

Mr. CHERTOFF. Ms. Sherburne, I would like to ask you a question. When did you first get transcripts of the Treasury witnesses who testified before the Treasury or RTC Inspectors General?

Ms. SHERBURNE. I believe we first got the transcripts on June—I'm sorry, July 23. That's based on a transmittal letter from Steve McHale to me.

Mr. CHERTOFF. Are you positive you did not get transcripts of Treasury witnesses before July 23?

Ms. SHERBURNE. Treasury witnesses?

Mr. CHERTOFF. Yes, Treasury witnesses.

Ms. SHERBURNE. We got the transcript of one Treasury witness before July 23. That would have been a transcript of Jean Hanson's deposition that we received from her lawyer.

Mr. CHERTOFF. From her lawyer?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. When did you get that?

Ms. SHERBURNE. I don't know.

Mr. CHERTOFF. It was before July 23; right?

Ms. SHERBURNE. I am not sure about that. I know we got it directly from her lawyer and not from the Treasury Department, but I don't know the time. I assume it would have been before July 23.

Mr. CHERTOFF. How did you arrange to get that?

Ms. SHERBURNE. I don't remember.

Mr. CHERTOFF. Did it come just unsolicited in a package, or did you make a request for it, or was there conversation about it?

Ms. SHERBURNE. Well, as you know, we had interviewed Ms. Hanson's lawyers. They did not wish to make Ms. Hanson available for us to interview, and so we had continuing communications with her lawyers about her testimony and her statements about the facts and her own conduct.

I don't remember a specific conversation with her lawyer about obtaining the transcript, but it would have been quite natural to have arisen in that setting.

Mr. CHERTOFF. So were you surprised to get a transcript of Ms. Hanson's sworn testimony before July 23?

Ms. SHERBURNE. No.

Mr. CHERTOFF. Did you use that transcript in part as part of your preparation in the interviewing process for White House witnesses?

Ms. SHERBURNE. Probably not.

Mr. CHERTOFF. Probably not?

Ms. SHERBURNE. I don't think we would have because we had completed our interviewing of all of the White House witnesses by that time. I'm sure we reviewed it——

Mr. CHERTOFF. By what time?

Ms. SHERBURNE. By the time we would have received that transcript. I don't think any of the transcripts were released until after July 18, and I believe we would have completed our own interviewing by that time. But I'm quite sure we would have reviewed the transcript to make sure that our understanding of the facts, as had been presented to us by her lawyers, was correct and consistent with her testimony.

Mr. CHERTOFF. Now, you worked that testimony——

The CHAIRMAN. I think Counsel has quite an extensive line of questioning and the red light has been on for a while, so why don't we turn to Senator Sarbanes and any questions you or the Committee would like to ask.

Senator SARBANES. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. I thank you, Senator Sarbanes, Mr. Chairman. Unfortunately I have some other meetings. I just came from a markup in Judiciary where one of our colleagues conveyed to me that there was new evidence regarding a bill that he had, and someone else said there is not new evidence. Now, we could have a massive public hearing and say who lied—you know, we can just take the minutest things and magnify them and pretend that we have created something when that's simply not the case.

Let me quote from a letter from Stephen D. Potts, the Director of the Office of Government Ethics, November 8, 1995:

Jane Ley——

If I'm pronouncing it correctly.

And Leslie Wilcox in their discussions with Jane Sherburne and Sharon Conaway on the afternoon of July 21 did indicate that, based upon their review of the transcripts of all the Treasury and White House officials with whom Mr. Altman had spoken about his recusal concerns, they did not see that any standard of conduct had been violated in those discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong.

I think what we are doing is trying to get people to reflect what happened 2 years ago, and if we can find some slight inconsistency, we try to blow it up. Frankly, after the first part of our hearings, I thought maybe I'd voted wrong. I cast one of three votes, along with Senator Glenn and Senator Bingaman, against creating this Select Committee and spending the money on this. I'm coming to the conclusion that that was a very good vote that I cast, that we're trying to make something out of nothing.

Now, Mr. Chairman, we may in the future have something of substance, I don't know, but I sure think we're digging a dry well right now.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. If I may try to shed some light on the discussion of what happened yesterday. We have the preliminary transcript, and I believe the Majority's staff has received a copy of yesterday's transcript.

So as to be accurate about what Ms. Ley did, in fact, testify. In response, at page 228 and carrying on to 229, to Mr. Giuffra's questions:

Ms. LEY. It was a discussion of the use or the application of the confidential information provision in our standards of conduct. The discussion was—was the mere receipt by an individual, or could the mere receipt by an individual of confidential information, without that individual going on to use it in some way, a violation of the standards of conduct. We said no, the mere receipt would not be. They said if we said the mere receipt, would you agree to that, and we said yes. So I think in his written testimony [referring to Mr. Cutler], the formal written testimony to the House, it talks about the mere receipt of information.

Mr. GIUFFRA. Did you ever approve in any way of the use of the words "informally concurred"?

Ms. LEY. I saw drafts of his testimony prior to the time—the written parts of his testimony. It may have been in there at some point, using those two words in connection with the mere receipt of the information, and I would not have objected to it if I had seen it in that context.

Later on——

Mr. CHERTOFF. Would you like to read the next question and answer, Mr. Ben-Veniste, for fairness and completeness rather than stopping there?

Mr. BEN-VENISTE. I haven't stopped. I said I'm continuing.

Mr. CHERTOFF. You turned the page. There's more on the bottom of the page.

Mr. BEN-VENISTE. Continuing:

Mr. GIUFFRA. Would you have objected in the context of informally concurring with his conclusion that no violation of any ethical standard had occurred by any White House officials?

Ms. LEY. That's not a correct statement of anything we did.

Mr. GIUFFRA. Mr. Potts, were you aware——

Mr. CHAIRMAN. You are saying you did not come to that conclusion?

Ms. LEY. We didn't conclude about the conduct of the individuals—we didn't make any conclusions about the conduct of the individuals in the White House. What we discussed was if the facts are such that when you are trying to apply a standard

and all you're looking at is the mere receipt of information, can you trigger a violation of the standard. We said no, you can't.

Now, if I understand your testimony, Mr. Cutler, you did the factual investigation upon which the conclusion was reached as to what was done, if anything, after the receipt of information. Based on your conclusion, you concluded that nothing was done with the receipt of that information; is that right?

Mr. CUTLER. That is correct.

Mr. BEN-VENISTE. Now, if you put the two pieces together, Ms. Ley's advice to you on behalf of the Office of Government Ethics that the mere receipt of information, if that's what the facts showed, do not implicate a violation of the standards of conduct, with your conclusion that there was no improper transmittal of that information, then did that in your mind justify a conclusion, albeit informally presented to you by OGE, that there was no ethical violation of that conduct?

Mr. CUTLER. That is correct, Mr. Ben-Veniste, and indeed you will find such a statement in my July 26 report. That was the meaning, at least to me, of my statement before this Committee on August 5, that based on my findings of the facts, OGE agreed with our interpretation of its regulations.

Mr. BEN-VENISTE. Let me go back to the big ticket questions. We have had 2 full days of testimony. None of the witnesses who have appeared before this Committee, be it from the RTC IG, the Treasury IG, Treasury General Counsel's Office or anyone else, has come to the conclusion with the full benefit of hindsight that there was any negative effect, that there was any skewing or misrepresentation in connection with the report that they presented on behalf of OGE to the Secretary of the Treasury.

Do you have any reason to believe that any of the receipt of information or the way that White House Counsel's Office conducted itself during its arm of the inquiry resulted in any skewing or misrepresentation contained in the final report issued by Secretary Bentsen?

Mr. CUTLER. I have no reason to believe that there was any skewing as a result of our having received the transcripts, whether they were the transcripts we got from witnesses, counsel for witnesses, or the transcripts we later received from the Treasury itself. We have testified under oath that we did nothing that could have made such a skewing possible.

Mr. BEN-VENISTE. Now, as we have developed over the past 2 days, the pertinent witnesses who provided the underlying testimony about which we are talking had, at the time that the Senate conducted its hearings a year ago, had testified under oath first in connection with Mr. Fiske's investigation?

Mr. CUTLER. That's correct.

Mr. BEN-VENISTE. That investigation resulted in a declination, as those familiar with the criminal process would recognize, a declination of any notion that there would be a criminal prosecution of anyone's conduct associated with this matter?

Mr. CUTLER. That's correct.

Mr. BEN-VENISTE. That investigation took precedence over the investigation conducted by OGE under the auspices of Secretary Bentsen and your investigation on behalf of the President?

Mr. CUTLER. Yes, and we were requested not to commence our interrogation of witnesses until they were finished.

Mr. BEN-VENISTE. You honored that request, did you not?

Mr. CUTLER. We did.

Mr. BEN-VENISTE. That resulted in the further compression of the time available to conclude your investigation prior to the anticipated hearings?

Mr. CUTLER. That's correct.

Mr. BEN-VENISTE. So the witnesses had testified under oath, first with respect to Mr. Fiske's investigation, second, in connection with the sworn testimony that they gave to the RTC and Treasury Inspectors General on behalf of the Office of Government Ethics?

Mr. CUTLER. That's correct.

Mr. BEN-VENISTE. Then this Committee, prior to public hearings, conducted further interrogations of those witnesses also under oath by way of depositions?

Mr. CUTLER. That's correct.

Mr. BEN-VENISTE. So that by the time those witnesses testified before this Committee last year, they had testified three times under oath?

Mr. CUTLER. That is correct.

Mr. BEN-VENISTE. Is there any notion that you have, with the benefit of hindsight, been able to substantiate that any witness, given that fact basis of the three sworn and independent opportunities to present their recollections under oath, was there any suggestion that any witness tailored testimony?

Mr. CUTLER. We know of no suggestion that any witness tailored testimony, and we are quite certain that no witness tailored testimony on the basis of any information received from us.

Mr. BEN-VENISTE. Now, you have testified about the appropriateness of trying to get the best possible recollection out of each witness who was under your responsibility pertinent to your inquiry; is that correct?

Mr. CUTLER. Yes.

Mr. BEN-VENISTE. We have heard testimony yesterday from the Office of Government Ethics as well as Treasury officials, both from the IG's Office and their counsel, to the effect that this investigation on behalf of the Treasury IG's and the RTC IG's was in the nature of a management review for Secretary Bentsen's use. Are you aware of that, sir?

Mr. CUTLER. I'm aware of the testimony. We were not, of course, familiar with Secretary Bentsen's internal arrangements within the Treasury and with the Inspectors General.

Mr. BEN-VENISTE. As it has been described to us and indeed my recollection is, and I haven't reviewed the transcript of testimony, obviously it occurred late yesterday afternoon, of Ms. Ley, but Ms. Ley testified that she suggested that it would be a good idea for the White House Counsel's Office to review the transcripts of the testimony provided to the Inspectors General of the RTC and Treasury.

Mr. CUTLER. So I noticed in watching yesterday's proceedings, and I believe that conversation was with Ms. Sherburne.

Mr. BEN-VENISTE. Sort of as a note of irony, it was established that, in order to give accurate testimony before this Committee, the

Inspectors General and their counsel of the RTC and the investigators sat down together, shared information, reflected upon the written documentation to the extent it existed in terms of calendars, diaries, and documents that would help with their recollection, prepared jointly a chronology of events to which each of them subscribed, contributing their own portions of material, and that the net result of that collegial effort was their testimony in deposition before this Committee.

Now, do you see that differently than I do in the sense of whether that was an attempt by honest and reputable people to provide this Committee with their best recollection of events?

Mr. CUTLER. I listened to your questions and to their testimony and I see it the same way you do, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Did you in fact attempt, in connection with your inquiry and within the ground rules that were established under it, to provide the President and ultimately the American people through your public testimony with the best available information, testing the recollections of each individual who was relevant to the inquiry?

Mr. CUTLER. We most certainly did. As I mentioned a few moments ago, we learned of two contacts which had not come to light in the Treasury and RTC Inspector General inquiry. We put those into our report and that enabled the Office of Government Ethics to deal with those two additional contacts in its opinion to the Secretary of the Treasury.

Mr. BEN-VENISTE. Now, yesterday much was made of the fact that summaries of testimony were provided to the White House. The transmittal information, to the extent that we have been able to discern, reflects that those summaries were transmitted to the White House on July 27.

Ms. Sherburne, do you have a different recollection?

Ms. SHERBURNE. No.

Mr. BEN-VENISTE. So if I understand the testimony concerning the summaries of transcripts, those summaries, the work product, I presume, of Counsel to the Secretary of the Treasury, were provided 3 days—4 days after—this is why I'm, I've chosen to follow a career in law rather than in science—4 days——

Ms. SHERBURNE. But you have that many fingers.

Mr. BEN-VENISTE. —four days after the actual transcripts were provided; correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. So what conceivable advantage could the receipt of those transcripts have provided, even with the worst possible motive by the recipient, what could those summaries have provided by way of advantage?

Ms. SHERBURNE. I was underwhelmed by our receipt of these summaries and saw no advantage that they could have provided to us or to anyone else.

Mr. BEN-VENISTE. Now, a great deal has been made and we are interested in learning why it was or how it came to be that one of those summaries on July 27 made its way to an attorney for a witness, albeit the fact is that that witness never appeared before this Committee in open session. Can you explain that?

Ms. SHERBURNE. Well, I had asked Sharon Conaway to consult with the Treasury Department to determine whether or not the restriction that they had imposed on the use of the transcripts had been lifted. They had asked us not to share the transcripts with any witness who would be testifying before Congress. I had wanted to determine whether we had permission to share the transcript of Mr. Katsanos' deposition with the lawyer for Lisa Caputo. Mr. Katsanos apparently had recollected a contact with Ms. Caputo that she did not recall, and we were interested in determining whether whatever he said about that contact would refresh her recollection or inform her about what she may have done or said.

I asked Sharon to contact the Treasury Department. She later told me that she had called, I believe she'd called Steve McHale and was referred to a fellow named David Dougherty, and that David Dougherty had said that he would have to check to see if the restriction had been lifted. He later called her back and said that no, the restriction had not been lifted, but that he had summaries that evidently were somehow different or contained information that was acceptable for release and dissemination.

So he told her that he could provide these summaries to her and that there was no restriction on their use. She then told me that after receiving the summaries she had faxed the summary of the Katsanos' transcript—I'm sorry, the summary of the Katsanos' transcript to the lawyer for Ms. Caputo.

Mr. BEN-VENISTE. Now, in point of time, do you recall the date that that occurred?

Ms. SHERBURNE. I have seen documents that fix the date on July 27. I don't have an independent recollection.

Mr. BEN-VENISTE. I want to mention to you that we have the deposition transcript of Ms. Conaway and that her sworn testimony is, in substance, in conformity with what you have just said about the circumstances. Were there any other transmittals or dissemination of the summaries relating to the testimony you had already received?

Ms. SHERBURNE. None whatsoever.

Senator SARBANES. Mr. Cutler, I just want to underscore one thing. We have spent a lot of time here over the last 2 days with some questioning about the improper use of the transcripts. In fact, a great deal of time was spent on that. I assume it will come up later, although I'm interested that the focus has shifted completely off of it in the opening rounds of questioning. But as I understand it, those transcripts were not shown to any White House witness or potential witness, or to any of their lawyers or representatives; is that correct?

Mr. CUTLER. Other than that each transcript was shown, as you know, under common Inspector General practice to the witness who participated in making that transcript.

Senator SARBANES. But not by you?

Mr. CUTLER. Not by us.

Senator SARBANES. That was provided directly to them by the Inspector General's Office?

Mr. CUTLER. That is correct.

Senator SARBANES. I mean as a normal matter of procedure. Now, the transcripts that were provided to you by the Treasury on

July 23, none of those transcripts were shown to any White House witness or potential witness; is that correct?

Mr. CUTLER. That is correct.

Senator SARBANES. Or to any witness' lawyer or representatives?

Mr. CUTLER. That is correct.

Senator SARBANES. The transcripts were used by you in order to establish the factual accuracy of your report and to prepare for your Congressional testimony; correct?

Mr. CUTLER. That is correct. They were used essentially to cross-check the current draft of the report and to make sure we had not missed anything or that we had a version from White House witnesses different from their testimony or the Treasury witnesses' testimony before the Inspectors General.

Senator SARBANES. OK. Thank you. Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Last year during the hearings, this Committee had an impressive display of testimony by Mr. Cutler regarding Treasury, RTC, and White House contacts. I had grave doubts about the testimony then and certainly what we've heard since gives us reason to know that it simply was not true.

But with respect to the White House reports, two White House attorneys prepared the reports. Sheila Cheston has been promoted by the Clinton Administration to General Counsel for the Air Force. Our other witness today, Jane Sherburne, is still at the White House and is in charge of coordinating the White House investigation for the Clintons.

Now, these are the people that prepared the report. We all know that the White House has done nothing but block, drag its feet, and delay and prevent this Committee from getting documents. To suggest that the White House lawyers prepared an unbiased White House report is an absolute joke. It's absurd to even mention it is unbiased.

The White House report is what we knew all along, a partisan report to cover the White House problems. Shortly before Mr. Cutler appeared before this Committee, he met collectively with all of the attorneys representing White House witnesses.

Mr. Chairman, this has gone on and on. We heard from various witnesses yesterday and the day before. We have now to investigate the investigation. We have had to investigate improper contacts regarding the investigation of improper contacts; having to do all this, I think it sums up what is a circle within a circle. It's a conflict upon conflict upon conflict. The White House is simply indulged in them to a never-ending degree.

Mr. Cutler, I would like to refer to page 6 of your testimony before the House. You said that OGE did not think it was a violation to get RTC information if it wasn't used to further their own or another's private interest.

How can you or anyone conclude or think White House staffers were not trying to further the private interest of Bill Clinton and Hillary Clinton who were under criminal and civil investigation by the RTC?

Mr. CUTLER. Senator Faircloth, you seem to be proceeding on the assumption that it is not possible for someone working in a White House—and I remind you some day there will be another Republican President—that it is not possible for someone working in the White House to act in an ethical and proper manner.

We investigated whether the White House personnel at that time, and remember, Ms. Sherburne and I and Ms. Cheston had not been in the Clinton White House at that time, we were new people. We investigated whether anyone had acted in an improper manner. We examined notes, we queried them, and we came to the conclusion that they had not.

You also seem to think that any conclusion that I would reach or that my team would reach is presumptively invalid because anyone who works in the White House, even someone brought in for the very purpose of conducting an investigation, is automatically suspect.

Now, can I deal with your——

Senator FAIRCLOTH. Let me ask you a question. Are you telling me that you don't think that Maggie Williams and Harold Ickes were trying to get information about the statute of limitations for the benefit of Bill Clinton? Who were they getting it for, if not for the Clintons?

Mr. CUTLER. No one in the White House knew what the subject of Mr. Altman's meeting would be when he requested it. I believe that's the common testimony of last July. Certainly they did not and we queried them as to what information they had passed along to the President or Mrs. Clinton, and all of that is duly reported in my report of last year.

But I believe they are both honest, decent people, that your presumption that they must be crooked people is wrong. Based on my factual investigation, I am satisfied they did nothing improper.

Senator FAIRCLOTH. Did you hear the testimony of Maggie Williams before this Committee?

Mr. CUTLER. Yes, I did and I also happen to know—I did not know Maggie Williams before I undertook this latest assignment.

Senator FAIRCLOTH. I am not talking about did you know her, did you believe her testimony?

Mr. CUTLER. Yes, I did.

Senator FAIRCLOTH. All right. That tells me a lot.

On page 17 of your disposition, you said you saw that OGE report on White House ethics, but it would have taken too long to do it. Mr. Cutler, here we are, more than a year after these hearings, still reviewing the issue.

Why didn't you ask for the OGE to do the report even if it would have been prepared after the hearings? I think it would have been a good idea to have gotten a report rather than what you thought might have happened.

Mr. CUTLER. I think it would be a wonderful thing if they rendered an opinion based on my facts or any other set of facts.

Senator FAIRCLOTH. Mr. Cutler, did you, at any time prior to arranging for the deposition to be transferred to you from Treasury, speak to anyone at the Treasury or the Treasury Department's General Counsel's Office in order to obtain other documents besides

transcripts for the purpose of your testimony? Documents other than the transcript now.

Mr. CUTLER. I certainly recall nothing to that effect. It is true, as I recounted today and I think we recounted last year, that around May, in the course of Mr. Fiske's investigation, he authorized us to examine the documents that the Treasury had submitted to Mr. Fiske. Shortly thereafter he authorized the Treasury to examine the documents that the White House had submitted to Mr. Fiske, and we did exchange our submissions to Mr. Fiske. But that was not an order and it was not in any way improper. It was expressly authorized by Mr. Fiske.

Furthermore, when we did it, we said in our letter to the Treasury, we do not wish to see anything that may be in your documents that relates to the substance of the Madison Guaranty investigation.

Senator FAIRCLOTH. Ms. Sherburne, did you by any chance ask the Treasury Department's General Counsel for documents other than the transcripts?

Ms. SHERBURNE. The Treasury Department's General Counsel, you mean Jean Hanson?

Senator FAIRCLOTH. Yes, or anybody else in the Treasury Department's General Counsel's Office.

Ms. SHERBURNE. I recall the same incident that Mr. Cutler just testified to. We did review the documents that Treasury had provided to Independent Counsel Fiske after the Independent Counsel had approved our review of those documents, and after they had been reviewed by Treasury and RTC to remove any information in those documents or any documents that contained any substantive information about the Madison investigation.

Senator FAIRCLOTH. Mr. Cutler, on July 24, a Sunday evening, you met with all of the attorneys for the White House witnesses. Do you think it was appropriate to allow witnesses to review the report before it was made public?

Mr. CUTLER. I think it was entirely appropriate, Senator Faircloth. I think it is quite customary, at least in a civil context as compared to a criminal context, that when a factfinding report is prepared that describes and reflects on and passes judgment on the conduct of individuals, as for example an internal corporate investigation done by outside counsel, it is quite normal and appropriate to show the draft to the lawyers for the subjects concerned, and to receive and react to their comments if they think we misstated anything or misdescribed anything.

Senator FAIRCLOTH. All right.

Mr. CUTLER. That is done quite often. We did it here. We had promised these lawyers, in order to get their cooperation and submit their clients to interviews by us, that we would do that. We did it. We took their comments. There were very few comments and we did not—we may have made a few changes in the report, but I don't think we made very many. Furthermore, the report itself became public 2 days later.

Senator FAIRCLOTH. You showed it to the Banking Committee on the morning of your testimony?

Mr. CUTLER. Correct, yes.

Senator FAIRCLOTH. Don't you think it would have been a proper thing to have done to let the Committee have it at the same time you did the attorneys for the witnesses?

Mr. CUTLER. Well, that would not have permitted—remember we showed that, we showed the attorneys for the witnesses a draft. If we had made the draft public or submitted it to the Committee, that would not have permitted us to absorb their comments, and where we thought justified to make a correction in the report that we were making.

Senator FAIRCLOTH. Well, in other words—I understand now how it works. You've called in the attorneys for the witnesses to review the report and then they made changes, and rewrote it as to how they wanted it to be?

Mr. CUTLER. Senator Faircloth, they did not change it and rewrite it.

Senator FAIRCLOTH. Well, you just said that there were no major changes. How do we know major from minor?

Mr. CUTLER. Whatever they were, they didn't make them. They submitted their comments to us, we reflected on those comments and——

Senator FAIRCLOTH. They told you——

Mr. CUTLER. —we decided whether we would make any change.

Senator FAIRCLOTH. They told you to make them? They did not make them?

Mr. CUTLER. They made a suggestion, Senator Faircloth. Can't you see that?

Senator FAIRCLOTH. I have a strong feeling that they were pretty heavy suggestions and that they—the report was——

Mr. CUTLER. That happens to be wrong. We did not let them take copies. We received their comments one by one and most of them we thought required no change. I can't even remember whether we made any changes.

Senator FAIRCLOTH. Could we have a copy of the report before and after?

Mr. BEN-VENISTE. In fact, we have all of those materials. The staff has reviewed all of the drafts of those materials.

Mr. CHERTOFF. We don't have the suggested changes. I believe I asked Ms. Sherburne if we had copies of the suggestions that the lawyers for the witnesses made, and she indicated she had disposed of them at the time.

Ms. SHERBURNE. I did dispose of the actual copies, but if you looked at the draft that we gave the lawyers to review on the night of July 24, and then the draft that Mr. Cutler presented to the House a few days later that would show you what changes we may have absorbed as a result of that session. I believe they were very few. We——

Senator FAIRCLOTH. You believe they were very few?

Ms. SHERBURNE. That's correct.

Senator SARBANES. We have the drafts, do we not? I will ask Counsel.

Mr. CHERTOFF. I don't think we have them. Actually, I think Mr. Kravitz and I were shown them. I suppose they should be made available to anybody else who wants to see them to make comparisons.

Senator SARBANES. Well, comparisons can be made obviously; the material is there for that basis——

Senator FAIRCLOTH. Mr. Cutler——

Senator SARBANES. —and I invite the Senator to do so.

Senator FAIRCLOTH. Senator Sarbanes, when you join this Committee as an investigative Senator and quit being defense attorney, we're going to make a lot more headway.

Senator DODD. Now, now, wait a minute.

The CHAIRMAN. You know what, I think if we want to hold this down, and I'm really trying. We have to stop and sometimes our Members may pursue a line of questioning that we may or may not feel sympathetic to but that is their right and judgments will be made accordingly as it relates to their own actions.

Senator continue, please.

Senator DODD. Senator Sarbanes made a point about some evidence, he wasn't suggesting anything to our colleague from North Carolina. Our colleague from North Carolina came back and made a suggestion about the Senator from Maryland.

The CHAIRMAN. Well, I will ask that if we have the proposed testimony—and I don't know whether we do—we will make it available and this way we can determine the changes by comparing it, the statement that was eventually given.

So I would ask Ms. Sherburne if we don't have that, you will make that available? I don't see any problem with that; do you?

Mr. BEN-VENISTE. We have in fact reviewed it, Mr. Chairman.

The CHAIRMAN. Well, is it in our possession?

Mr. CHERTOFF. No.

The CHAIRMAN. OK.

Mr. BEN-VENISTE. It's not in our possession but our counsel have reviewed it to see whether there were any material changes, and there weren't any.

The CHAIRMAN. I understand. The Senator has made a request. The request is to have the opportunity to review the statement—the draft statement and the final statement. I think it is reasonable. Ms. Sherburne, would you make that available, please, to the Committee?

Ms. SHERBURNE. Sure, certainly.

The CHAIRMAN. Thank you. It will be made available?

Mr. CUTLER. Senator, may I just make one comment?

The CHAIRMAN. Sure.

Mr. CUTLER. The fact that there were changes between the draft submitted to these lawyers on July 24 and the final version that I presented on July 26 does not mean that the changes were the result of what these lawyers said, because at the same time we were reviewing and revising the draft to reflect what was in the transcripts which we had received on July 23 and we were doing the normal process of editing, just as I'm sure goes on in this Committee, changing sentences, correcting grammar, moving things from here to there, all the normal things you do under time pressure——

The CHAIRMAN. I understand. I'm only suggesting in the interest of comity, since the counsels have seen it, unless there is some very compelling reason not to, we should make it available. This way

Senator Faircloth and any other Senator who wants to look at it will have that opportunity to do so.

That's all. Ms. Sherburne, you will make that available?

Mr. CUTLER. I hope, Senator, we have not reached the point where all drafts of all reports become publicly available. Think of how many versions of reports this Committee goes through. I would hope we exercise discretion on this subject.

The CHAIRMAN. I think we will, Mr. Cutler.

Senator do you want to conclude?

Senator FAIRCLOTH. I have one quick question. Mr. Cutler, whose idea was it to meet with these attorneys? Was it yours?

Mr. CUTLER. I certainly participated in it. We had——

Senator FAIRCLOTH. I didn't say—I know you participated. Was it your idea to call the meeting of the attorneys to the White House the night before?

Mr. CUTLER. I participated in the idea, Senator Faircloth. We were a team——

Senator FAIRCLOTH. Who else was on the team?

Mr. CUTLER. Ms. Sherburne, Ms. Cheston, Ms. Conaway, and from time to time, Mr. Joel Klein, the Deputy Counsel.

Senator FAIRCLOTH. OK, thank you.

The CHAIRMAN. Senator Sarbanes.

Senator DODD. Well, Mr. Chairman, just to follow up on this, I've not been participating all the last 3 days for reasons that the Chair and others are aware of, but, I must say, Mr. Chairman, here, we're in this room, in this hearing room, and there's always a sense of drama about being here, but this is not an investigation of the Medellin cartel we're talking about here. We're talking about what is something that almost, it's become sort of a hall of mirrors. If I understand, last night I stayed up until about 2 a.m. watching the entire proceedings from yesterday because I wasn't here.

As I look at it, it's sort of like we are looking at ourselves, looking at ourselves, looking at ourselves. This is an investigation of an investigation of an investigation by the special investigator. I mean it gets to the point where we're just going on and the conclusion, at least at that juncture, was there no criminal wrongdoing. That was this, so we're looking at a managerial aspect of this. In fact, even with those who said that there was some concerns they had, as I listened yesterday, when asked the question whether or not there had been any undermining or any interfering with their work, the answer was no.

So I just get worried a bit here when we go through this. I understand we've spent 3 days on this. We still have to look at the referrals which is, I hope, going to be the major thrust of what we're getting at here, but this sort of going back over and over and over and over what are pretty standard procedures, and I know the Chairman feels this way because we've talked about it. But I'm worried in a sense. We try to get people to serve in this Government. We try to get people to come and work as Government employees.

I get worried when we spend the kind of time on this particular aspect of it, it sends just a dreadful, dreadful message. Again we are looking at activities here that have been really investigated, investigated, and investigated. We are splitting hairs on stuff, it

seems to me. And it gets surreal. It undermines what I think all of us want to have and that is good people, competent people doing their job.

Were there was slightest indication by Mr. Fiske at the time that there was any criminal activity, it would be an entirely different matter, but he concluded just the opposite; in fact, told us so.

So even on the ethical questions here, when you still go back and look and no one is suggesting in retrospect you might not have done this or that differently, but I hope no one on this Committee is going to take the position that that kind of perfection which only one person who ever inhabited in this earth possessed is going to be a standard by which we judge public service. If that's the case, we're in real trouble.

Again, I think there is a very serious matter we have to get to, and that is the criminal referral issue, and we ought to get to that, I hope, with 3 days on this sort of hall of mirrors I worry about. Again, I understand this to be pretty much managerial is what we're looking at. So I don't have—I've listened to the questions and answers and I don't want to—other Members have questions they want to ask, let them go ahead.

But I really hope we can wrap this up and get to the heart of the matter we've really got to get to.

Mr. CUTLER. Could I just say, Senator Dodd, that if we continue along this path of treating anyone in elected office or appointed office as suspect until he or she proves to the contrary, we're not—how many mothers are going to want to have their children grow up to be President or Senator or Congressman or a civil servant in the Executive Branch?

The most valuable thing that any country can have, any democratic country, is a tradition of public service, of citizen-statesmen who are honored for what they did, for public service to be an honorable calling. If we keep this up in televised hearings like this and elsewhere, always playing this game of "gotcha" that somebody referred to the other day, we're going to trash all of us. We're going to make public service something that only knaves or fools will engage in.

Senator DODD. Thank you. Unfortunately I agree with you, and it's happening. The mere allegation is synonymous with conviction and we're not cautious enough and careful enough about that.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I don't have a lot of questions. I don't have a desire to wander through the hall of mirrors but I've sat here as a layman listening to the attorneys joust and I jotted down two questions to which I would like the answers. They're very simple and I hope straightforward.

You said, Mr. Cutler, on one occasion, and I wrote it down, "I may have transgressed" with respect to your testimony. "May" is an interesting word. You as a lawyer probably don't like it when it comes to an evidentiary hearing. Could you tell us whether you did or you didn't and in what area?

Mr. CUTLER. I don't think I did, but obviously some of the OGE people appear to think I did. What I meant to say in that state-

ment is that they agreed informally, where they had authorized, perhaps in a different context, but they agreed informally with the interpretation of their regulations based on a state of facts which I had found and which I felt responsible for.

It was not their statement of facts. I did not mean to say that they concurred in my findings of facts, but only that based on my findings of fact, as we had set them forth both in oral form and in drafts of the final report which were given to OGE, that based on my findings of fact they agreed with the interpretation of their own regulations that we had applied after extended discussions with them about the meaning of the regulations.

Senator BENNETT. OK. If I can say it back to you so that you can correct me so I won't mischaracterize you. What I hear you saying is you still believe you did not transgress in this area, but you've now heard their interpretation and it is reasonable enough that you're willing to say they may be right and you may be wrong?

Mr. CUTLER. Well, I would rewrite what I said to make clear what I meant. I used to work for a man—it was Elihu Root, Jr.—who drafted the AT&T pension plan, and they had to pay a very large judgment to a widow in a situation that they had never intended to be covered. As a result, he put a motto on his desk which said, "The words you use must not only be consistent with what you mean, they must be inconsistent with any other meaning."

Now that's a standard to which we could all repair, and I confess I did not achieve it in what I said in my draft.

Senator BENNETT. All right. Well, then we come back to the question that the Chairman asked before I was called away, and I was hoping to hear a clear answer. It follows on in this dialog.

The Chairman came back to the sentence in the letter from Mr. Potts and Ms. Ley, "OGE did not informally concur in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official." The Chairman asked you if that statement is correct or not. I didn't hear a yes or no out of you. Are you prepared to say yes or no?

Mr. CUTLER. My answer would be the same. I believe they did concur in our interpretation of their regulations as applied to a set of facts which I had found for which they did not accept responsibility. But on that set of facts, I believe they did informally concur with my application of their regulations to those facts.

Senator BENNETT. Well, back to the comment by Mr. Root, is your answer inconsistent with their statement?

Mr. CUTLER. Apparently, my answer in the testimony is inconsistent with what they thought. I think their statement contains as many ambiguities as mine. I believe they do agree with my interpretation of their regulations.

Senator BENNETT. So to the question is their statement correct or not, I believe I hear you say, in your opinion, their statement is not correct?

Mr. CUTLER. You are right.

Senator BENNETT. Thank you.

Thank you, Mr. Chairman. I just wanted that clarification.

The CHAIRMAN. Thank you, Senator.

We do have a little more time left. Go ahead, Mr. Chertoff.

Mr. CHERTOFF. Ms. Sherburne, I just wanted to get back on the issue of the transcripts and the use of the transcripts. You acknowledge, you recall now getting Ms. Hanson's transcript before July 23; right?

Ms. SHERBURNE. I think I said I wasn't sure when I received it.

Mr. CHERTOFF. Do you have a doubt about whether you got it before July 23?

Ms. SHERBURNE. Do I have a doubt? Sure, I have a doubt.

Mr. CHERTOFF. Would it help you if I told you that Ms. Conaway said that she recalled—and this is in her deposition—getting Jean Hanson's deposition before July 23, would you disagree with that?

Ms. SHERBURNE. Would I disagree with Ms. Conaway's statement?

Mr. CHERTOFF. Yes.

Ms. SHERBURNE. No.

Mr. CHERTOFF. So let's take that as a given that Ms. Hanson's transcript was received before July 23. You were working on an ongoing draft report or chronology which Mr. Cutler has been talking about; right?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. Ms. Hanson's testimony would have been part of what was incorporated into that document; right?

Ms. SHERBURNE. I believe that I asked Ms. Conaway to review Ms. Hanson's transcript with the other transcripts that we had been receiving for White House officials, and to review it against the chronology that I had prepared, and to determine whether or not I was accurately stating the facts about the conduct as reflected in those transcripts, or to identify any inconsistencies in the transcripts from what I'd understood the facts to be as reported in that chronology.

Mr. CHERTOFF. So that transcript, the White House witness transcripts and then transcripts that came over on July 23, in addition, all were reviewed by the person who was writing the working chronology so that any new information or inconsistent information could be incorporated into that; right?

Ms. SHERBURNE. No, that's not quite right, because I didn't review the transcripts.

Mr. CHERTOFF. Ms. Conaway did?

Ms. SHERBURNE. I never looked at the transcripts but I was the one who was preparing the chronology and I was receiving the input from Ms. Conaway as that chronology developed.

Mr. CHERTOFF. That input consisted of what she was learning from reading the transcripts; right?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. The point of getting the transcripts was that you wanted to use them; right? That was why you got them, so you could make use of them?

Ms. SHERBURNE. The transcripts we were most interested in of course were the transcripts of people we hadn't been able to interview. We were most anxious to get the transcripts from the RTC officials and the Treasury officials that we had not interviewed in order to determine whether or not there were any contacts out there that the people we had interviewed had failed to identify.

Mr. CHERTOFF. But you asked for all the transcripts; right?

Ms. SHERBURNE. I think when we—in our initial conversations about obtaining the transcripts, we indicated we would like to receive all the transcripts, yes.

Mr. CHERTOFF. In fact you got all the transcripts?

Ms. SHERBURNE. Eventually, yes, although I'm not sure we ever got Mr. Ludwig's transcript.

Mr. CHERTOFF. That's the one where the interview was afterwards; right; correct?

Ms. SHERBURNE. After we received——

Mr. CHERTOFF. After you received the transcripts?

Ms. SHERBURNE. Yes.

Mr. CHERTOFF. Now, you have all this information and Ms. Conaway is reviewing it and you are preparing a document which is going to be your draft report which contains a chronology which is your understanding of what happened; is that correct?

Ms. SHERBURNE. That's correct.

Mr. CHERTOFF. So on July 24 in the evening, was that 7:30 in the evening that you had all the lawyers come in for the White House witnesses?

Ms. SHERBURNE. I don't know what time it was in the evening.

Mr. CHERTOFF. Why did you pick Sunday evening, by the way?

Ms. SHERBURNE. Mr. Cutler had been out of town and he was returning on Sunday. We certainly wanted to do this before the start of the hearing on July 26 which was only 2 days away. I don't believe we had sufficiently advanced the draft statement or the chronology at any time prior to that, so you know, how we were all working at that time. This event was sandwiched in on July 24.

Mr. CHERTOFF. Now, a couple of days before that meeting, Mr. Cutler called Mr. Bentsen or someone acting for Mr. Bentsen to urge him to get the rest of those transcripts over to you; is that correct?

Ms. SHERBURNE. That's my understanding, yes.

Mr. CHERTOFF. Is that right, Mr. Cutler, you called on July 22?

Mr. CUTLER. Yes, we had several conversations with both Mr. Bentsen and Mr. Knight because we were concerned that we had not yet received the transcripts.

Mr. CHERTOFF. Was it your understanding, Mr. Cutler, as of July 22 that you had a promise to get those transcripts the next day?

Mr. CUTLER. Well, I don't like to use words like—that we would get them the next day?

Mr. CHERTOFF. Yes.

Mr. CUTLER. No, I don't think we had any promise.

The CHAIRMAN. I'm going to ask Counsel to suspend and I'd like to pose a question to my Ranking Members here. The red light is on. I know that Counsel has a line of questions that he'd like to pursue. It would be my thought that we give him time to——

Senator SARBANES. He can finish. I assume it won't go on forever.

The CHAIRMAN. Good. It's with that understanding that we pursue this line so hopefully he can finish that, and we would give whatever time necessary to the others. So why don't you take off that red light now, and we will pursue this line and then make additional time available to the Minority.

Senator SARBANES. With the understanding that it won't go on forever.

The CHAIRMAN. Absolutely. Mr. Chertoff.

Mr. CHERTOFF. It won't go on forever. I have a plane to catch later anyway. Mr. Cutler, back to July 27, you understood you had a commitment at that point to get the transcripts?

Mr. CUTLER. It was our understanding we would receive the transcripts in time for me to complete our report in light of the transcripts.

Mr. CHERTOFF. It was very important to you, Ms. Sherburne, to get those transcripts by Saturday; right?

Ms. SHERBURNE. I don't know that it was important to get them by Saturday. I know it was important to get them so we could complete the review that Mr. Cutler was reporting on on July 26. Saturday was July 24——

Mr. CHERTOFF. July 23?

Ms. SHERBURNE. —July 23. Time was running out.

Mr. CHERTOFF. The transcripts came over on the afternoon of that day.

Ms. SHERBURNE. I don't recall when the transcripts came over.

Mr. CHERTOFF. Would it refresh your memory if I read from Ms. Conaway's deposition of yesterday—2 days ago at page 21:

Question: Do you have—you say you don't have a specific recollection, but can you place it within a timeframe of a couple of hours or lunch?

Answer: I generally recall it was around 4 o'clock, but it is pretty general.

Does that comport with your recollection?

Ms. SHERBURNE. No.

Mr. CHERTOFF. You think it was later or earlier?

Ms. SHERBURNE. I don't have a recollection.

Mr. CHERTOFF. You have no knowledge?

Ms. SHERBURNE. No.

Mr. CHERTOFF. Let's turn for a moment to the summaries before I get back on to the time line.

Your testimony is that you have a distinct recollection from Ms. Conaway that the summaries were provided by Mr. Dougherty of the Treasury with a specific understanding that there was no restriction whatsoever on their use?

Ms. SHERBURNE. I understood that they were unrestricted.

Mr. CHERTOFF. Did you watch the testimony yesterday?

Ms. SHERBURNE. No.

Mr. CHERTOFF. Did you hear about it?

Ms. SHERBURNE. I heard about portions of it.

Mr. CHERTOFF. Are you familiar with the testimony of Mr. Dougherty who indicated he had no knowledge whatsoever about these transcripts coming over?

Ms. SHERBURNE. Yes, I did hear about that.

Mr. CHERTOFF. Are you familiar with Secretary Bentsen's testimony a couple of days ago that, in his view, transmitting copies of summaries to attorneys for witnesses would be as much in violation of his restriction of July 23 as passing on the transcripts themselves?

Ms. SHERBURNE. I did hear that, but that does not change my recollection that, when we received the transcripts or as Ms. Conaway reported to me and, as I gather, she testified in her deposi-

tion, that the summaries—that when she spoke to Mr. Dougherty, he said he had to check about the restrictions on the transcript.

He went and checked with someone, that he came back and said the restrictions on the transcripts have not been lifted but I have these summaries that are unrestricted. I do remember that. I can't explain the discrepancy or Mr. Dougherty's failure of recollection.

As you know, we did get the summaries. We have the summaries. We produced them to the Committee, so they did get to us.

Mr. CHERTOFF. Everybody agrees with that. The question is who made the decision, and we have the Secretary who said you can't show them to witnesses or attorneys for witnesses, and that's what he told us and that's what the letter says, and then we have the fact that at least in one instance it was shown to an attorney for a potential witness.

Senator SARBANES. Are you talking about the transcripts or the summaries?

Mr. CHERTOFF. A summary.

Senator SARBANES. I don't recall Bentsen ever saying that he said that about the summaries.

Mr. CHERTOFF. My recollection is, and I can verify it in the record, that I asked him whether in his mind the restriction about transcripts would have been applicable to summaries of transcripts.

Senator SARBANES. He said it would have been but I don't recall him saying that he addressed the question of summaries at any point or had any knowledge about it.

Mr. CUTLER. As the question was put to Secretary Bentsen the other day, I did hear that part. He wasn't aware that these summaries had been prepared in such a manner that they could be released.

Mr. CHERTOFF. I understand that, Mr. Cutler. What I'm saying to you is his statement to us was that, in his view, the restriction upon disseminating transcripts to witnesses would be equally applicable to summaries of transcripts.

Mr. CUTLER. Summaries of everything in the witness transcript. Once again, we have ambiguities. If you ask a different question, you might have gotten a different answer.

Mr. CHERTOFF. I don't want to engage in a dialogue about Mr. Bentsen. My question is can you enlighten us in any way about whom in Treasury Mr. Dougherty might have gone to ask for permission to make unrestricted use of transcripts?

Ms. SHERBURNE. I don't know how I would know that, Mr. Chertoff.

Mr. CHERTOFF. You have no idea about that, you never received any information about that?

Ms. SHERBURNE. I received information from Ms. Conaway that she had asked Mr. Dougherty about the restriction on the transcripts. He said he would check. He came back and said the restriction had not been lifted, but that we could use the summaries in an unrestricted way.

The CHAIRMAN. Did you notice yesterday Mr. Dougherty doesn't even remember sending the transcripts over or having any conversation specifically with Ms. Conaway?

Ms. SHERBURNE. I had heard that, Senator. I thought that that suggested that his recollections might be faulty across the board.

The CHAIRMAN. I agree with you.

Mr. CHERTOFF. Ms. Sherburne, let me ask you, on July 24, you have a document which constitutes—on July 24 in the evening, where the lawyers for the White House witnesses are coming in before their testimony at the House and before their testimony at the Senate, you have a document that sets forth your draft view of what actually happened here; right, is that correct?

Ms. SHERBURNE. On July 24.

Mr. CHERTOFF. Right, in the evening.

Ms. SHERBURNE. We had copies of——

Mr. CHERTOFF. Of a document.

Ms. SHERBURNE. —the document that was the draft of the chronology and the statement, yes.

Mr. CHERTOFF. That was a draft of your version, your understanding, your report about what you believed was the story of what happened with the contacts; right? That's what you had?

Ms. SHERBURNE. You mean what I personally believe or what we collectively had learned, yes.

Mr. CHERTOFF. That is the document you handed out to all of the lawyers for all of the White House witnesses; right?

Ms. SHERBURNE. Right.

Mr. CHERTOFF. As a consequence of that, you understood that all the lawyers would now have a common document or common report that laid out in it a version of the events that the White House was prepared, at least at that point, to say was its opinion about what happened; correct?

Ms. SHERBURNE. That's exactly right.

Mr. CHERTOFF. To use a colloquialism, everybody now could work off the same page; is that right?

Ms. SHERBURNE. No, I don't think that's right, Mr. Chertoff, because everybody in that room had given sworn statements on the same subjects that we were writing about in that chronology, three times. So working off the same page, if they were wise, would have been the same page of their Grand Jury testimony, the same page of their IG transcript and the same page of their Senate deposition.

Mr. CHERTOFF. You haven't seen their Grand Jury testimony; right?

Ms. SHERBURNE. No, I haven't.

Mr. CHERTOFF. Neither have we. Nobody knows what they were asked in the Grand Jury; right?

Ms. SHERBURNE. Presumably, the Independent Counsel does.

Mr. CHERTOFF. But you don't know what questions they were asked and what answers they gave; correct?

Ms. SHERBURNE. Correct.

Mr. CHERTOFF. Now, is it your testimony that you don't recall anybody changing their testimony or altering their testimony during the course of our hearings from what they had said previously?

Ms. SHERBURNE. In connection with information that we had given them in the——

Mr. CHERTOFF. In connection with the subject matter of what the Senate was examining and the subject matter of what you were examining.

Ms. SHERBURNE. I'm sorry, you will have to ask the question again—that anyone had——

Mr. CHERTOFF. Did witnesses in the Senate hearings last year change their testimony about the subject matter of the inquiry from their earlier testimony in Senate depositions or in Inspector General depositions?

Ms. SHERBURNE. I'm aware of one witness who amplified on testimony that he had given in a Senate deposition.

Mr. CHERTOFF. Who was that?

Ms. SHERBURNE. That was Harold Ickes.

Mr. CHERTOFF. Didn't Harold Ickes repudiate a statement he made in his Senate deposition and explain it as an error?

Ms. SHERBURNE. That's not my understanding of what he did.

Mr. CHERTOFF. At least you'll acknowledge with me that one witness did change his testimony; correct?

Ms. SHERBURNE. No.

Mr. CHERTOFF. No?

Ms. SHERBURNE. I don't——

Mr. CHERTOFF. You think he amplified his testimony?

Ms. SHERBURNE. That's exactly right. Let me explain, please.

Mr. CHERTOFF. Go ahead and explain.

Ms. SHERBURNE. I understood from a press conference that the Chairman gave on July 29 that he was concerned about certain statements that Mr. Ickes had given in his Senate deposition. The Chairman put Mr. Ickes, and frankly the rest of the world, on notice that that was an issue that he was very concerned about and that Mr. Ickes would be well advised to address in the course of his testimony before the Senate.

He did address that by explaining—he quoted the testimony that he had given in the Senate deposition, and he explained further, after he had had the benefit of the review of his notes, he explained further what he meant by that statement. I did not view that as a change in testimony.

Mr. CHERTOFF. You thought it was of no help, or would be of no help to Mr. Ickes at any point before he gave his testimony to know what others had said about the subject?

Ms. SHERBURNE. Before he gave his Senate testimony?

Mr. CHERTOFF. Before he gave his House testimony.

Ms. SHERBURNE. Before he gave his Senate testimony in which you apparently think he changed his testimony, I think almost all of the White House and Treasury witnesses had testified publicly in the Senate hearing.

So he certainly had heard the testimony or had access to the testimony, the public testimony of Roger Altman, of Jean Hanson, and of the other people who participated in the meeting that he had been questioned about.

Mr. CHERTOFF. Ms. Sherburne, since you mentioned Mr. Altman, didn't Mr. Altman, in fact, also in his testimony before the Senate make predictions about what Ms. Hanson was going to say or refer in his testimony about what Ms. Hanson had said in depositions by way of explaining or reconciling his own testimony with her?

Ms. SHERBURNE. I think that's a mischaracterization of what Mr. Altman did. I'm not familiar with what he said about Ms. Hanson.

Mr. CHERTOFF. We don't want to let that stand, so let me read it. I can refer you to page 430 of the testimony, if you want to check me on it, where Mr. Altman says:

> For example, Senator, I saw a transcript of the deposition she gave and if I have it right, she was asked whether I instructed her to go to the White House. She said I can't recall. It was my sense that he may have wanted me to. Then she was asked a second time did he or did he not instruct you to go to the White House, and as I recall the deposition—I'm doing my best to recall it—she said I can't recall. It was my impression. So she hadn't said at least in those responses he asked me to go. She's saying I can't recall.

Did it seem to you, Ms. Sherburne, that there's a problem when witnesses, in giving their testimony, have a knowledge or understanding of what all the other witnesses say about a subject so they can make a determination in their own mind, either innocently or not innocently, about whether their recollection can be made to fit with the other recollections? Did you see that as a problem anywhere along this process of meeting with lawyers for witnesses or meeting with lawyers to prepare witnesses?

Ms. SHERBURNE. I think, Mr. Chertoff—first of all, let me say that I had no recollection or knowledge or, frankly, concern about an Altman–Hanson transcript. But with respect to sharing information, I think it depends on what your objective is. If your objective is to get it right, I see no problem, and that was our objective.

The CHAIRMAN. Ms. Sherburne, I'm going to ask Counsel to suspend. I'm just going to make an observation.

Now, people are coming to testify. Summaries are made. Summaries of various witnesses are made available to you. From those summaries, and obviously you have to make your report, you prepare a report. The attorneys for the very people who are going to testify are briefed on it.

The fact of the matter is that there were witnesses who literally said, wait until you see what so-and-so says. Now, where do you think they got that information?

Senator SARBANES. If we have some time here, we'll develop it.

The CHAIRMAN. I'm just making an observation, and that's what Counsel is getting to. By—and I think Senator Faircloth in his own style—briefing the attorneys for witnesses you had a situation where witnesses were informed about other testimony and your report, and I believe that as a result, we saw people who you say amplify.

Some of us believe testimony was substantially altered so that witnesses would not contradict each other. Again, that's an observation that I make. That's our concern. I do not expect you to respond.

Ms. SHERBURNE. I would like to attempt to respond.

The CHAIRMAN. Certainly, but I'm just suggesting to you that that is the concern as it relates to that meeting and the sharing of that information. Mr. Cutler, you can say that was the proper process. I believe that it created a situation that necessitated us going into this.

Mr. CUTLER. Can I point out a factual discrepancy?

Senator SARBANES. Let me ask a couple of questions. When was the meeting with the lawyers held?

Ms. SHERBURNE. It was on July 24.

Senator SARBANES. Sunday night, July 24?

Ms. SHERBURNE. Sunday, July 24.

Senator SARBANES. That was to review the testimony that Mr. Cutler was going to give; is that correct, to see whether they had suggestions that some of it was not accurate or unfair or inaccurate; is that correct?

Ms. SHERBURNE. That's correct.

Senator SARBANES. When did Mr. Cutler give that statement?

Ms. SHERBURNE. He gave it on July 26.

Senator SARBANES. Tuesday, July 26?

Ms. SHERBURNE. Yes, sir.

Senator SARBANES. The meeting was on Sunday night, July 24?

Ms. SHERBURNE. That's correct.

Senator SARBANES. Did anyone give testimony to Congressional Committees, either House or Senate, on this matter before Mr. Cutler gave testimony in open session on Tuesday, July 26?

Mr. CUTLER. No.

Ms. SHERBURNE. No, Mr. Cutler was the very first witness.

Senator SARBANES. So now, if you are concerned that the Cutler statement was used by witnesses when they came before the Committee, the Cutler statement was public record before any of those witnesses appeared; is that not correct?

Ms. SHERBURNE. That's right.

Mr. CUTLER. May I add to that, Senator Sarbanes, that on July 29, the Treasury distributed to all the witnesses copies of all the transcripts, and that Mr. Altman did not testify until August 2, and Mr. Ickes did not testify until August 4. So that by July 29, they had copies of all of the transcripts.

Senator SARBANES. In fact, when the report was published, the transcripts were published with it.

Mr. CUTLER. You mean, that's the OGE report.

Senator SARBANES. The OGE report?

Mr. CUTLER. That's July 31, I believe.

Senator SARBANES. That took place before any of these witnesses, on which the focus is now, testified.

Mr. CUTLER. Right. My copy of that report is dated June 30.

Senator SARBANES. July?

Mr. CUTLER. July, I'm sorry.

Senator SARBANES. Now, Mr. Chairman, this is mirrors inside of mirrors. What we have here is a situation in which it's asserted that these people somehow got information improperly. In fact, the people who testified came after this material had been put on the public record.

Now, the purpose, as I understand it, of your meeting with the lawyers to review the draft was to give them an opportunity to comment on the nature of the chronology; is that correct?

Mr. CUTLER. Correct.

Senator SARBANES. Perfectly appropriate thing to do. That was done on a Sunday night. And you were going to testify on a Tuesday morning?

Mr. CUTLER. Right.

Senator SARBANES. The next Tuesday morning?

Mr. CUTLER. Correct.

Senator SARBANES. No one testified before you testified?

Mr. CUTLER. Correct.

Senator SARBANES. So when you testified, you laid your report out on the public record, every witness to follow subsequently had your report, everyone had your report. It was in the public domain. The press had your report.

Mr. CUTLER. Right.

Senator SARBANES. In fact, I think the press printed large chunks of your report, if I recall correctly, and the witnesses——

Mr. CUTLER. I hope they did, but I don't remember.

Senator SARBANES. Well, I think that was the case. I'm going to yield to——

Senator DODD. Mr. Chairman, just on this point, and I think it's a very important point, this gets to the reality. But what I was getting at earlier and what we're doing here in a sense is there are sort of three fact situations. You get a witness that says well, I don't recall. The immediate accusation is you're being disingenuous. If you have witnesses with conflicting testimony, the allegation is someone's lying. If you have witnesses that have consistent statements, it's a conspiracy.

This is getting ridiculous. So you're trapped no matter what you say. I don't remember. Different recollections are consistent ones. You are either disingenuous, lying, or conspiracy, and that's just foolishness.

Mr. CUTLER. It goes back to the point that if you're in public office, you're suspect until you prove the contrary.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the agreement that you had reached with Secretary Bentsen, let me review that again. That was not any secret agreement that you had with respect to your ability to make use of the work product that was being done by the Inspectors General under his aegis and control?

Mr. CUTLER. The fact that we would cooperate and exchange information was publicly stated on June 30.

Mr. BEN-VENISTE. There wasn't any question about the fact that you had requested—June 30——

The CHAIRMAN. July.

Mr. BEN-VENISTE. No, June 30, a month before. I want to emphasize that this—and I believe Secretary Bentsen testified and I believe it is clear from your deposition and your testimony here today—that it was publicly stated that you wished to cooperate to the fullest extent possible, given the time constraints, to share information to the best of your abilities; is that correct?

Mr. CUTLER. That is correct.

Mr. BEN-VENISTE. Secretary Bentsen, having given you that assurance, the mechanics were left, the logistics of how that would be implemented was left to staff; correct?

Mr. CUTLER. Correct.

Mr. BEN-VENISTE. So that by the time July 22 rolled around, having in mind the time that you would likely be giving your testimony, it was then in your view, I take it, about the right time for this sharing to take place?

Mr. CUTLER. It was past the right time, as far as we were concerned.

Mr. BEN-VENISTE. So on July 23 you finally got the transcripts. Senator Sarbanes, I think, has laid out beyond any question the

fact that all of the information contained in those transcripts, which were then utilized to provide your testimony, was all out there on the public record for anyone to see before any witness gave their fourth version under oath of the events; is that correct?

Mr. CUTLER. That is correct.

Mr. BEN-VENISTE. Now, finally, an issue has been raised. It's been suggested earlier, and now identified, that somehow Mr. Ickes was provided information through some surreptitious means that allowed him to tailor or change some testimony.

Now, it is my understanding that Mr. Ickes, in his deposition before the Senate Committee, on one particular question had requested the opportunity to review notes to refresh his recollection. For reasons that escape me entirely, he was denied that opportunity. He was encouraged to guess in the absence of being able to refresh his recollection with his own notes. He guessed wrong, as it turned out.

Senator DODD. In fact, if the Counsel will yield, I recall it because I asked the questions. His lawyers, Mr. Bennett specifically, as I read the transcript, said guess. It was his lawyer's advice to Mr. Ickes to guess at what was said.

Mr. BEN-VENISTE. Now, that testimony, if I understand your testimony here today, Mr. Ickes' testimony before the Senate Committee, in deposition, before his public testimony was to occur, that testimony was commented upon publicly prior to the time Mr. Altman gave his testimony; is that correct?

Ms. SHERBURNE. That's correct.

Mr. BEN-VENISTE. So Mr. Altman well knew that Mr. Ickes had made an error, and as I recollect the transcript of the testimony, Mr. Altman said so in his testimony; is that correct?

Ms. SHERBURNE. That's right.

Mr. BEN-VENISTE. Now, Mr. Altman presumably would have had the benefit of knowing what Mr. Ickes had said by reason of the fact that this had been publicly discussed. Mr. Ickes' attorneys, certainly after his deposition, would be in a position to know that his client had spoken incorrectly and would have wanted to correct that. Is there any reason why Mr. Altman, by the time of his testimony, should not have known that Mr. Ickes had testified incorrectly and had documentary evidence to correct that testimony?

Ms. SHERBURNE. No, it was a matter of public record by that time.

Mr. BEN-VENISTE. So I come back to the question that I have tried to pose to witnesses throughout 3 full days of hearings here. Did anything bad happen as a result of a joint investigation and some sharing of information between Treasury and the White House that took place?

Ms. SHERBURNE. No.

Mr. BEN-VENISTE. Mr. Cutler.

Mr. CUTLER. Not only did nothing bad happen, but I think we can underline that nothing happened as a result of any information we imparted to anyone because we did not impart any information based on these transcripts.

The CHAIRMAN. I think we're close to wrapping it up.

Mr. CHERTOFF. Mr. Cutler, I just want—you were asked about this June 30 comment which you mentioned in your opening state-

ment. What you said publicly was, "We will be coordinating with the Treasury with respect to interviews and factual information on the Treasury side and the White House side." That's it; right?

Mr. CUTLER. That's it.

Mr. CHERTOFF. You didn't say anything about getting transcripts or getting sworn statements; correct?

Mr. CUTLER. Right, and at that time, we had no understanding about transcripts. We were talking about various methods of collaborating. We already had agreed on the exchange of documents and we were talking about such things as White House lawyers being present at the IG depositions or some substitute for that, and that we, in response to the specific request by the IG's, would make our White House witnesses available for depositions, in addition to the informal interviews we were conducting with them.

Mr. CHERTOFF. Did you know that the Inspector General from the RTC had expressed to Ms. Sherburne on July 5 her strong objection to furnishing transcripts?

Mr. CUTLER. Well, I received daily reports from Ms. Sherburne and Ms. Cheston as to what was happening so I must have heard that with——

Mr. CHERTOFF. Did you get that one?

Mr. CUTLER. I heard that problems had arisen at the July 5 meeting.

Mr. CHERTOFF. The problem was the investigators thought it was bad investigative practice to do it. Did that concern you?

Mr. CUTLER. Well, they were talking about what IG's normally do. It wasn't necessarily that it was a bad idea for the Treasury investigation and the White House investigation to be conducted in cooperation. Indeed they asked us would we make our White House witnesses available. They could not command them. They told you the other day they had no subpoena power. They needed our cooperation just the way we needed theirs.

Mr. CHERTOFF. Well, did you have—was this used as a whip over them?

Mr. CUTLER. No.

Mr. CHERTOFF. Give us the transcripts or we won't give you the witnesses?

Mr. CUTLER. No, we gave them the witnesses long before we got the transcripts.

Mr. CHERTOFF. Did you understand the RTC Inspector General had an objection to it, and did that worry you?

Mr. CUTLER. Mr. Chertoff, all I can ask you is, based on what the RTC objection was, how would it have been possible to conduct our investigation of what had actually happened if the Treasury position was you cannot see anything that we learned in the course of our investigation? How could we have done it? How could they have done it without access to our people?

Mr. CHERTOFF. There is no question they wanted access to your people. But I still don't have any——

Mr. BEN-VENISTE. Why not answer the question Mr. Cutler is asking. It's a reasonable question.

Mr. CHERTOFF. I am happy to answer the question. I think the question, Mr. Cutler, boils down to an observation that Senator D'Amato made last year. If you want to talk about the big picture,

maybe that's what the big picture is, and maybe it's not the big picture for people in Washington.

Maybe it's the big picture for people from New Jersey like where I come from. If you are investigating people, you cannot also be defending them and the fact of the matter is what happened here is that the process of your investigation took place at the same time that you were in the process of defending the White House against what you testified in your own deposition was what you regarded as unfair attacks.

Now, I have no doubt about your personal ethics, but the rules of conflicts of interest and the rules of the road that every other practicing lawyer operates under say you can only serve one master at a time. If you investigate somebody, you investigate them. If you defend somebody, you defend them. The right side of the brain can't be investigating while the left side of the brain is defending. That is what perhaps the problem with your investigation was.

Mr. CUTLER. May I respond to that?

Senator DODD. Or prosecuting, I might add.

Mr. CUTLER. It is possible to walk and chew gum at the same time.

Are you suggesting that a President of the United States cannot look into the conduct of his own people and decide whether any remedial measures are required? Are you suggesting that he is not free to pick someone to do that who is not previously involved in the matters that occurred? Are you suggesting that it is up to the Congress to lay down a prescription as to whether the President must have an Inspector General?

I really don't understand your theory. It is perfectly possible for an ethical lawyer to make a hard-hitting factfinding investigation. I have heard no criticisms of my investigation other than the process. No one has complained that we overlooked anything or that we were too gentle on some of the people involved so far as I know, or that we misinterpreted the ethical regulations.

Having done that, that's finished, done. It is perfectly appropriate, I believe, for the same person to defend the institution of the White House and to defend people in the White House who are charged with lies, this that or the other thing which, on the basis of the report, are untrue. What is wrong with that?

Mr. CHERTOFF. So what you did, Mr. Cutler, was you were an independent hard-hitting investigator until July 25 or 26, and then on July 26, you converted into a defense attorney reacting against lies in meeting with the witnesses and preparing them. Is that what happened really?

Mr. CUTLER. We were meeting with witnesses throughout, Mr. Chertoff, as you know. First to interrogate them; later when the hearings were scheduled, to help prepare them in the normal way in addition to the preparation they were getting from their own private counsel.

Mr. CHERTOFF. Isn't this, you know, this phenomenon——

Mr. CUTLER. What is your suggestion as to what should have been done?

Mr. CHERTOFF. Perhaps what should have happened, Mr. Cutler, is either the President should have asked the Inspectors General to do the complete factfinding on the White House side as well as

the Treasury side, or maybe they should have brought in someone detailed from another Department to do it, or maybe White House Counsel should have done it and then stepped back from the process of preparing the witnesses to testify and meeting with them before their testimony.

Senator DODD. May I inquire, is that the view of the Majority that henceforth that this is the way things ought to be done? I mean that's very intriguing——

The CHAIRMAN. I don't think that the Majority is going to attempt to do anything other than to ascertain whether there was an abuse of power, or whether the investigations as conducted comported with the facts and was conducted properly.

The fact is—and I think it has been mentioned by some and we may never agree on this—that it places someone in an absolutely impossible position. I think I mentioned this to you, Mr. Cutler, before. I certainly mentioned it to Mr. Altman, and I mentioned it on the Senate floor.

It's the same where the person who is undertaking the investigation is also a person in a particularly important position for the very people who will be investigated. Whether as the head of RTC or in your case Counsel to the President.

Yes, certainly the President should have the ability to appoint someone to conduct an investigation. But then does that person come forward and take on the other?

I just—but again, reasonable people may disagree—have a difference of opinion. My friend and colleague and I have a difference of opinion and I don't think we serve any useful purpose to continue this dialogue.

I think you have very clearly put forth your position, what you did, how it came about. I think we understand it. I think that, again, Mr. Chertoff put forth a view as to how this situation could become very difficult if not impossible given the circumstances. This happened. We're not going to change it. So we're going to do the best we can to fulfill our challenge.

I turn to my colleague and my friend, Senator Sarbanes; if your side has anything further to examine, please continue.

Senator SARBANES. Well, Mr. Chairman, I take it we are coming to a conclusion here; is that correct?

The CHAIRMAN. I would hope so.

Senator SARBANES. I just want to make some final observations. I very much regret what transpired over the last few minutes. I don't think the failure to show any substance which I think has clearly been the case or even to really show any problem with the process ought to then lead to what I perceive as a veiled personal assault on Mr. Cutler.

I think it's quite clear to me that he behaved in a forthright and ethical manner throughout this. In fact, I am puzzled. The Chairman himself said on two occasions—once when we had Secretary Bentsen here, just a couple days ago, "Well, that's what disturbs this Senate"—I am quoting Chairman D'Amato—"and let me say that I was not aware of the restrictions that you had placed," this was on transmitting the depositions, "and had that, had the letter intent of that restriction been followed through, we would not have even have had this inquiry."

Now, the letter intent was followed through. Of course we're still having the inquiry, but nevertheless—and then also earlier last year with Secretary Bentsen. Mr. Chairman, if I might make a point to tell you, I understand sending the depositions over to Mr. Cutler, I think that is a closed question.

The CHAIRMAN. You know I don't mean to——

Senator SARBANES. I invite you to interrupt but I quoted you and you obviously should respond to it.

The CHAIRMAN. The fact of the matter is sending over and sharing information is one thing. But when—and my point is, when those summaries are made available in whatever form, whether they're shared by way of a briefing prior to the report being prepared, or whether there is a summary which is actually sent to a potential witnesses' lawyer, that goes beyond—that is something that I do find troubling. There is the distinction.

Senator SARBANES. All right, Mr. Chairman. The depositions, none of them were made available. One summary was made available to the lawyer of a witness who was never called before the Committee. Everyone else testified after Mr. Cutler's opening statement and after the depositions were made public. So to the extent their testimony would be shaped or influenced by it, the material that would shape or influence it was on the public record. It was not gained through these people in a nonpublic fashion. That's just the fact of the matter. Now given that——

The CHAIRMAN. I disagree. The meeting that took place on Sunday evening. I would suggest it's highly unusual to give these counsels the opportunity to review the proposed testimony that Mr. Cutler was going to make.

Senator SARBANES. It's your view that that would enable them to shape the testimony of their clients; is that right?

The CHAIRMAN. I am just telling you that's a fact. That's what took place. I find it extraordinary that this would be the investigative process. I just do.

Senator SARBANES. Is your concern about that that they would then use that to shape the testimony of their clients?

The CHAIRMAN. The fact is it should not have taken place.

Senator SARBANES. Oh, no, we don't——

The CHAIRMAN. You think it should?

Senator SARBANES. What is the harm that flowed from it? That their clients' testimony would be shaped and influenced by that?

The CHAIRMAN. The fact of the matter is that witnesses that are going to come before should not—their attorney should not have been told and had before them the very report and testimony before Congress got what Mr. Cutler was going to offer.

Senator SARBANES. Because they would then use it with their clients?

The CHAIRMAN. Well, it opens the door to all kinds of use. It opens—notwithstanding that he testified——

Senator SARBANES. On Tuesday morning he gave that statement in public testimony——

The CHAIRMAN. —on Tuesday witnesses were——

Senator SARBANES. —their clients followed them thereafter.

The CHAIRMAN. That's a far different situation than having that 48 hours before, before this Committee or before anyone else and—

absolutely extraordinary, I find it to be extraordinary and some Senators very much question how it is and why it is that process was utilized.

Senator SARBANES. Well, we know Senators are scratching very hard to find something to question. I think this is a very clear example of it. I mean, no witness' testimony could have been shaped by this because the material was put on the public record on Tuesday morning. Now——

Mr. CUTLER. If I can just interject for a minute. It was the practice of the Treasury to make all of the transcripts available to all the witnesses before they testified so that they could have an opportunity to testify as truthfully as they possibly could.

Mr. CHERTOFF. My question, Mr. Cutler, is——

Senator SARBANES. Go ahead.

Mr. CHERTOFF. My question, Mr. Cutler, is somewhat different. It just comes down to the issue you opened on. In many ways all of this unraveled because of an AP story of an interview you gave on May 5, 1995, in which you were quoted as saying:

> If we found inconsistencies, we would go back to White House officials and go back over testimony they gave us and then we would say we have heard other reports. I think it was perfectly appropriate to say that this is your testimony to us. There is conflicting testimony, are you sure that's what you said.

Now, first of all, did you say that?

Mr. CUTLER. In substance I said that to the reporter, that is correct——

Mr. CHERTOFF. Now——

Mr. CUTLER. —but I was not aware at that time that these transcripts had been received too late for that purpose. It was a very academic discussion. What I was saying was even if we had done it, it would have been perfectly appropriate to do because that is not a sharing of the transcripts.

Mr. CHERTOFF. Let me come——

Mr. CUTLER. That is what all good investigators, at least outside the criminal context and sometimes even within the criminal context, do.

Mr. CHERTOFF. Let me come back to that for a second, Mr. Cutler. I just wanted to establish that the quotes are accurate; right? You did say——

Mr. CUTLER. In substance they are accurate quotes of what I said. I explained all of this in my own direct statement.

Mr. CHERTOFF. I understand but you understand that that's why we want to ask questions to make sure we understand the explanation. Otherwise——

Senator SARBANES. You will need to explain it again, even though it was in your opening statement since Mr. Chertoff has put this line of questioning out there. So you'd better—you should——

Mr. CHERTOFF. I just want to make sure we have it step by step. Given that it's correct, your explanation to us is that when you were caught unprepared or unaware, you hadn't focused on it and therefore you didn't remember the sequencing of when you got the transcripts as opposed to when you talked to the White House officials; is that it? Is that your understanding?

Mr. CUTLER. I didn't remember whether we had the Treasury transcripts when we interviewed White House officials.

Mr. CHERTOFF. In fact, what the quote says is: "If we found inconsistencies, we would go back to White House officials and go back over testimony they gave us." Would you agree with me that that quote indicates that this process of going back was something that—in the quote itself was something that occurred after you had completed your interviewing of the White House witnesses?

Mr. CUTLER. Certainly after we had completed our initial interviews, although there may be some interviews that we didn't even initiate until after we had received information from others.

Remember, as Ms. Sherburne told you, we did receive a few transcripts from the lawyers who were given the transcripts of their own clients' testimony, in accordance with normal procedures.

Mr. CHERTOFF. So you would agree with me that the quote itself is perfectly consistent with the fact that you received transcripts after you had done interviews of White House witnesses. In fact, that's exactly what the quote says you did, you got transcripts after your interviews and you went back again?

Mr. CUTLER. We also have a confusion, Mr. Chertoff, in what you mean and what I mean by "transcripts." If you are speaking of the transcripts we got from Mr. McHale on July 23 subject to a condition, I misremembered that we did not receive those transcripts subject to a condition until after we had completed virtually all of our interviews.

Mr. CHERTOFF. Are you acknowledging to me therefore that, at least with respect to transcripts that you received from sources other than Mr. McHale, like the Hanson transcript or the White House depositions, that as to those you went back and confronted witnesses?

Mr. CUTLER. That is my understanding of what my team did, yes.

Mr. CHERTOFF. So maybe, we are getting some light on this. So that, in other words, there was a category of transcripts you received before July 23, at least including Ms. Hanson's and a number of——

Mr. CUTLER. May I interrupt you a moment? Someone is correcting me. If you are suggesting that we gave transcripts to the witnesses or communicated to them the substance of what was in there, as we've testified, we did not do that.

Mr. CHERTOFF. No, I'm suggesting that——

Mr. CUTLER. We had the information from the transcripts in our heads and all we did was to say there may be some conflicting testimony, are you sure of what you've told us.

Mr. CHERTOFF. That's exactly the point. That is what the article in a sense triggered. All this said that you were—you had transcripts, you would go to A and you'd say, you know, we have other information from the other participant in the conversation——

Mr. CUTLER. I'm saying that I'm prepared to defend that. I think that's a perfectly normal investigating lawyer's practice.

Mr. CHERTOFF. This is really where I want to close, with this article, which in a sense triggered the question is that it in fact was the case that you had transcripts of witness depositions, that you used those transcripts, you didn't show them to the witnesses, but you used them to go back to other witnesses and challenge them

or confront them or ask them about their own testimony based on information you learned from these other transcripts?

Mr. CUTLER. What I'm saying is we made no such use of the McHale transcripts. The other transcripts we had without any conditions and we did not communicate—either read or communicate, or in any other way, indicate the substance of any other individual transcript to a White House witness we were interviewing.

Mr. CHERTOFF. My last question is——

Mr. CUTLER. That was perfectly proper.

Mr. CHERTOFF. My last question then is this, you got the McHale transcripts on July 23. On July 24 when you had the meeting with all the White House lawyers, was there any of that process of back and forth that took place during that meeting?

Mr. CUTLER. I don't understand your question.

Mr. CHERTOFF. During that—on July 23 you got the McHale transcripts?

Mr. CUTLER. Right.

Mr. CHERTOFF. On July 24 in the evening you had the mass meeting with the lawyers for the White House witnesses. During that meeting with the lawyers for the White House witnesses, did you continue to engage in the process of going back to lawyers for individual witnesses and raising or reconciling with transcripts or testimony you got from others?

Mr. CUTLER. All our interviews had been completed by the time we got the McHale transcripts.

Mr. CHERTOFF. So the process of reconciling was not underway on July 24 during this meeting when you called everybody together?

Mr. CUTLER. No, this was a meeting for them to look at and comment upon the draft final report relating to their clients.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Ms. SHERBURNE. May I make one final point?

The CHAIRMAN. Certainly.

Ms. SHERBURNE. I'm concerned with the suggestion left on the record by Mr. Chertoff that the manner in which we proceeded with this internal review is highly unusual and inconsistent with standard practice.

In a prior life, which I frankly long for, as a private lawyer, I had been retained by clients to conduct internal investigations. In the course of that work, we followed a procedure—and this is very standard in the practice of law—a procedure where we interviewed witnesses and then made preliminary findings, sat down with witnesses and their lawyers and reviewed the preliminary findings to make sure that we hadn't made any mistakes, made reports to a board of directors or whoever the client was, and then participated in the defense of that conduct or the explanation of that conduct with the Federal agency. I don't think that that's highly unusual or a practice that is anything less than quite standard.

Mr. CHERTOFF. Can I just address that? That's a very good point. Because I think it's important to make one thing clear about what's different from the——

Senator DODD. It's a comment at this point.

Mr. CHERTOFF. The issue was raised to me by Ms. Sherburne. I think I would like to make sure my comment is clear about what the standard——

Senator SARBANES. It's a little point and not a big point.

The CHAIRMAN. It's an observation. Mr. Chertoff, go ahead.

Mr. CHERTOFF. The question here arises, Ms. Sherburne, not in the setting in which, for reasons of its own, the President, the White House, or a corporate president decides to have an internal investigation. This investigation that you conducted here occurs where there are already outside investigations underway, much the same way as if there was a Grand Jury investigation or an SEC investigation ongoing with witnesses being called for depositions. At that point, beginning an internal investigation where you start to bring witnesses in together and give them a version of a draft report, I think you would acknowledge to me would expose the lawyers who were doing that to some criticism from the investigating agencies.

Ms. SHERBURNE. That's not consistent with the practice that I'm familiar with.

The CHAIRMAN. OK. Senator Sarbanes, yes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, I think Senator Dodd's observation a little bit earlier about the techniques that are used to investigate the Medellin cocaine cartel are somewhat different from what our mission is here and indeed what the mission was of the White House when it conducted its review of these facts. Throughout these hearings we have seen the issues shift as each question is raised. As the question was raised, were any transcripts improperly transmitted to anyone, that issue has been closed. It has been resolved.

Whether any report by any Inspector General or the Office of Government Ethics was skewed or somehow interfered with or the people who made the report improperly pressured, that question has been answered in the negative. There was no such.

Each of the people, even those who were somewhat critical of the process, who were involved in conducting those investigations and making those reports have testified here that they stand by the conclusions reached; that their reports were a full, unbiased, and accurate result of a complete inquiry. Similarly, the White House report by Mr. Cutler has not been assailed or attacked in terms of its substance.

So in the absence of any real issue, we are left here on day 3, after a tremendous amount of preparation and the expenditure of time and money by this staff and by each of the witnesses who have appeared here for 3 days, their attorneys, their staff, we are left here with the conclusion that, although nothing wrong actually was demonstrated to happen and indeed there is no doubt in my mind that if there was some tailoring of testimony, Mr. Chertoff and others would have found it, indeed we would have been very interested if it had occurred. But it didn't occur.

We are left at the end of all of this process with the remarkable suggestion that maybe Mr. Cutler shouldn't have done his inquiry at all. That's what we're left with. I am astonished, and I have a high threshold for surprise after 25 years or so in Washington.

I suggested at the beginning of all of this that maybe public hearings really weren't necessary because we had done the work in our deposition process, and we had seen that nothing bad had happened. I have to say that at the end of all of this—and maybe I have some paternity here because being involved in Watergate, I have seen how the pendulum has swung and I think Mr. Cutler's observation and Senator Dodd's observation were very astute because a bad thing happened there, a tremendous abuse of Government power occurred and was exposed, now we think that every time there is some mention in a political or other context of impropriety that we must raise a hue and cry and put people in the position that Senator Dodd has put them; that is, if they tell the truth, they're part of some conspiracy. If they get it right or they get it wrong, they have no way of going forward to convince the American people because they've been put in front of these cameras.

Now when I signed on——

The CHAIRMAN. Counsel, let me tell you something. At a certain point in time, and I understand a summation, but I respectfully disagree with your conclusions. I saw witness after witness who couldn't even recall basic things like the transmission of documents. Even when we showed him the notes carefully taken by Ms. Sherburne's associate he can't recall. He doesn't know when the documents were transmitted or the people who had custody of them.

I would suggest to you that we have seen, in many cases, selective memory failure. I'm not suggesting that of these two witnesses. On the contrary, I think they have testified to the best of their ability. We have differences. That's far different. If you can tell me that that show was not a spectacle yesterday, it was a tragedy. The very person who was supposed to have custody of these documents and these depositions didn't know how they were transmitted—basically refused to answer and was nonresponsive. And Mr. Dougherty didn't remember the phone call or the transmission or any of these events. Incredible. And you read this in light of the depositions that Mrs. Sherburne's colleague has provided us, Ms. Conaway. Now come on——

Senator DODD. Mr. Chairman——

The CHAIRMAN. —I understand and to a certain extent, I agree with Senator Dodd's observations that if you're going to take—in a general sense, but to insinuate that the work of the Committee is somehow not proper, that we're finding fault with all of the witnesses and all of their testimony regardless of whether warranted, that is unfair to the work of the staff, it is unfair to the work of the Committee and to our colleagues. And I believe that it goes well beyond——

Mr. BEN-VENISTE. Chairman D'Amato, I didn't say that and with respect to the transmittal of these summaries, it occurred on July 27, 4 days after the transcripts themselves went forward, a day or so before Senator—Mr. Cutler rather, made his testimony.

All of that is put in its proper context and we come up with, so what? Did something bad happen? No, it didn't. That was the point. When we do these investigations and we have amassed all of this information, we have to get to a point with saying is there something important here.

The CHAIRMAN. I respectfully suggest to Counsel there will be an opportunity to make findings. You may or may not agree with the Majority. You may in some instances. You have a right to write a Minority report, but let's gather the facts.

For you to say at this point in time that this is a waste of effort and time, I respectfully disagree.

Senator DODD. Mr. Chairman, I don't think that was said and also I think it's fair, look, we're not—there is suggestions on the part of Mr. Chertoff and so forth that in fact something terribly wrong happened. I mean that's quite clear. Let's not kid ourselves.

But I think what the point that Counsel was trying to make is that we ought to try and resolve issues where we can without necessarily having to go into 3 days of public hearings.

A lot of what we've talked about over the last 2 days, despite faulty memories or whatever may have been inconsistent, to draw that there were conclusions here that something bad happened, I think a good part of it—and this is a fair comment to make—that a good part of this could have been resolved without having to go through a public hearing process.

The point I tried to make earlier, because I'm sure people have watched this for 3 days and are trying to sort what this is all about, I come back to the point I was trying to make earlier; that is, that we have an investigation of an investigation conducted by the Special Investigator. I mean this is why many people hate Washington, I sense, because they wonder what we're doing here. In a sense, I think that's a fair observation to make at the end of 3 days. I respect the Chairman's point, but respect ours as well here. This is 3 days of hearings on something that a good part of this, if not all of it, but a good part of it could have been resolved by just Counsels doing their normal inquiries through people and coming to the conclusion we've reached now after 3 days. This is why people get angry about what we do here. We spent 3 days on this. That's an observation.

The CHAIRMAN. Sure. I think—and the Senator was not here, and I'm not suggesting that you were not advised, but when the investigators themselves indicate that they were overridden, that they were not happy and supportive of the manner in which—and I'm talking about the RTC investigators—the investigation was conducted, it was very obvious. Now again, after reading the transcript, my colleague may disagree, but we have to take the totality of this. But you can't say there's no reason for this when the actual investigators testified before this Committee that they were disturbed by the process.

I don't think we should start to attempt to recount those things that some of us find disturbing. I understand, as it relates to many of my colleagues' observations, and indeed in some cases, the public hearings are painful, they're difficult for everyone including all of the Members here on both sides.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes, Senator Sarbanes. I would like to attempt, Senator——

Senator SARBANES. I'll be very brief.

The CHAIRMAN. Thank you.

Senator SARBANES. Mr. Chairman, first of all, let me say that I think questions that were raised yesterday were fully answered here today by Mr. Cutler and Ms. Sherburne. You made reference to the witness yesterday who couldn't recollect and both Ms. Sherburne and by reference Ms. Conaway in their depositions in effect said well, this is what happened and that seems to me to be what happened——

The CHAIRMAN. And I believe them, absolutely.

Senator SARBANES. —so we're putting that to rest.

My concern is in the course of these I think rather definitive answers being given here today, the process shifted until at the end, Counsel, in my judgment, in effect made an attack on Mr. Cutler.

Mr. Cutler's response to that, I thought in a general way, was that it's possible to walk and chew gum at the same time, but the implication of that line of questioning to Mr. Cutler I found very distressing.

I share the view of my colleague, Senator Dodd, earlier when he spoke. I mean I think Mr. Cutler was seeking the truth. He was trying to find out what happened. If you have conflicting reports, you try to ascertain that. This is a man who's recognized within the profession as an expert on ethics. President Bush made him a Member of the Commission on Federal Ethics Law Reform, and he played a part in developing the legislative proposals that flowed from that report.

So I thought that was untoward what occurred here, and I just want to close, since it's my alma mater, Princeton last year gave Mr. Cutler an honorary degree. I'm interested in that. I mean, I follow those every year because Princeton only gives about 8 or 10 a year, honorary degrees. I just want to read this citation that went with this honorary LLD that Mr. Cutler received:

> Today he stands as a powerful example of the lawyer-statesman who has been historically so prominent a figure in American public life. He ably fills the role of advocate, adviser, and public servant, and manages to bring them into unique compatibility. For all his political acumen, he is cherished for his conscience as much as his competence, for his wisdom even more than his savvy, and for his steadfastness in refusing to sacrifice principle for ideology or expediency.

The CHAIRMAN. Senator, on that note, I want to thank the witnesses for their appearance.

We stand in recess until 10 a.m. Tuesday morning.

[Whereupon, at 1:09 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Tuesday, November 14, 1995.]

[Appendix supplied for the record follows:]

LLOYD N. CUTLER
2445 M STREET, N.W.
WASHINGTON, D.C. 20037-1420

May 20, 1996

BY HAND

The Honorable Alfonse M. D'Amato, Chairman
The Honorable Paul S. Sarbanes, Ranking Member
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
United States Senate
534 Dirksen Senate Office Building
Washington, D.C. 20510-6075

RE: Office of Government Ethics Review of 1994
Report on Internal White House Investigation
of Treasury/White House Contacts

Dear Senators D'Amato and Sarbanes:

In the majority's January 26, 1996 Report of the Special Committee to Investigate Whitewater and Other Related Matters on the Progress of the Investigation into Whitewater Development Corporation and Related Matters (the "Committee Report"), the majority asserts that I "admitted to the Committee that [I] may have 'transgressed' and 'may have gone too far when [I] testified' before the Banking Committee in August 1994" concerning the Office of Government Ethics' ("OGE's") review of the investigation of Treasury/White House contacts I conducted for the President in the summer of 1994. Committee Report, at 9. I have carefully reviewed the record to determine whether in fact I "transgressed" and whether there was any ambiguity in my 1994 testimony to Congress on this subject. I respectfully submit

that, taken as a whole, my 1994 testimony on this subject was clear and unambiguous and that I did not in any way go "too far." I am submitting this letter to ensure that the Committee has before it a clear chronology of my 1994 testimony and the facts supporting that testimony. I also request that this letter be made a part of the official record of the Committee's investigation.

Background

I served as Special Counsel to the President from March through September of 1994. In that capacity, I conducted an investigation at the President's request into the so-called "Treasury/White House contacts" in the fall of 1993 and early in 1994, in order to determine whether any White House personnel engaged in any ethically improper conduct relating to those contacts. I reported to the President and later to Congress my factual findings and my conclusion that no White House personnel had violated any ethical regulations. I testified to that effect before the House Banking Committee on July 26, 1994 and the Senate Banking Committee on August 5, 1994. While my report found no ethical violation, it did criticize the sheer number of people involved, and the judgments of some of those participating. It also made recommendations -- since adopted -- as to how and when such contacts should be conducted in the future.

At about the time I was asked to conduct my investigation into the conduct of White House officials participating in these contacts, Secretary of the Treasury Bentsen asked OGE to investigate whether the Treasury officials who also participated in these contacts had violated OGE's ethics regulations. Because OGE has no factual investigating capability, it arranged with Secretary Bentsen for the Treasury and RTC Inspectors General (IGs) to do the factual portion of the Treasury's investigation. My staff and I cooperated fully with the Treasury's investigation and made all of the White House people involved available for depositions by the IGs. On the basis of its analysis of the facts collected by the IGs, OGE issued a written opinion concluding that no employees then employed by the Treasury Department had violated OGE's ethics regulations in connection with the same Treasury/White House contacts I was investigating from the White House side.

At this same time, Independent Counsel Robert Fiske was concluding an investigation of whether these same contacts violated any federal criminal law. Mr. Fiske had asked both me and the IGs not to begin our own witness interrogations until he concluded his investigation and we of course complied. We did not begin interviewing witnesses until after June 30, 1994, when Mr. Fiske issued a brief report concluding that there was no

basis for alleging a federal criminal violation in connection with these contacts. Mr. Fiske expressed no opinion on whether any of these contacts had violated non-criminal federal ethics regulations applicable to Executive Branch employees. This question was the primary focus of the Treasury investigation and my investigation, as I announced publicly at a press conference on June 30. This was only 26 days before I was due to testify before the House committee to state my findings and conclusions.

OGE's Review of My Investigation

The nonpartisan OGE is the agency charged with issuing and interpreting the Standards of Ethical Conduct applicable to Executive Branch employees. Because of its unique expertise in this area, and because it was preparing an opinion concerning the Treasury employees involved in the same Treasury/White House contacts I was investigating as to the White House employees, I asked OGE if it could prepare a written opinion as to whether, based on my findings of fact with respect to the conduct of the White House officials, their conduct had violated OGE's ethics regulations. OGE replied that, because of the time pressures involved in preparing its opinion concerning the Treasury employees, it did not have time to prepare a similar opinion concerning the White House employees. Instead, OGE agreed to review drafts of my report and comment informally on the

discussion in those drafts of how OGE's regulations applied to the facts as I had found them.

Towards this end, members of my review team met with OGE officials in my office to discuss my investigation at least two or three times in June and July of 1994. My team and I met with Stephen Potts, Director of OGE, Gary Davis, OGE's General Counsel, and Jane Ley, OGE's Deputy General Counsel, on June 20. My team and I met with Ms. Ley and Leslie Wilcox, an OGE attorney, on July 21. I may have been called away during part of this meeting. While my calender shows a third meeting with OGE officials scheduled for July 25, the day before my report was submitted to Congress, I do not recall whether the meeting was held or, if so, whether I participated. In addition to these meetings, members of my review team had numerous telephone conversations with OGE attorneys in July.

During these discussions, we informed OGE of the results of our fact-finding with respect to White House personnel, and we sought guidance on the application to our fact-finding of the relevant ethical standards. We showed at least two drafts of the report to Ms. Ley, whose extensive comments were all substantially incorporated in my final report. Under extreme time constraints, we did our best to ensure that we made

no reference to OGE in my report that had not been authorized by Ms. Ley or that was inconsistent with her comments.

My 1994 Congressional Testimony

In my written report to the House on July 26, 1994, attached at Exhibit A, I stated that there were three arguably relevant ethical standards: (1) 5 U.S.C. §§ 2635.501 and .502, which prohibit an employee from participating in a matter without the prior authorization of a designated ethics official if the employee determines that a reasonable person with knowledge of the relevant facts would question his or her impartiality in the matter; (2) 5 U.S.C. § 2635.702, which prohibits an executive branch employee from using his or her public office for private gain; and (3) 5 U.S.C. § 2635.703, which prohibits executive branch employees from using non-public information to further their own or anyone else's private interests. Report, at 4-5.

I noted in my report that two main ethical issues arose with respect to the Treasury/White House contacts. The first was whether it violated any ethical standard or was otherwise inappropriate for the White House to receive a "heads-up" from a Treasury official that the RTC was making criminal referrals which made incidental mention of President and Mrs. Clinton, and thereafter for Treasury and White House officials to discuss how to respond to press leaks and queries about the matter. The

second was whether it violated any ethical standard or was otherwise inappropriate for White House officials, after Mr. Altman had told them he was considering recusing himself from participating in any Madison Guaranty matter, to have given Mr. Altman their views on whether he should recuse. Id., at 5.

I concluded that there had been no violations of any of the arguably applicable ethical standards with respect to either of these issues. Id., at 6, 8. I concluded that the "heads-up" received by the White House was entirely proper and consistent with past precedent. Id., at 6. I also concluded with respect to the recusal issue that, while everyone involved acted in good faith and no ethical rule had been breached, the discussion among White House officials and Mr. Altman about whether he should recuse should not have taken place. Id., at 8.

With respect to the "heads-up" issue, I noted in my report that OGE "agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interest, does not violate the [ethical] standards." I went on to say that, "[o]n the basis of my review, the information was not used for such a purpose." Id., at 6 (emphasis supplied). This language was included in a draft my staff showed to Ms. Ley.

With respect to the recusal issue, I noted in my report that OGE "has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue." Id., at 8. This language was also included in a draft reviewed by Ms. Ley. She did not indicate any substantive disagreement with this statement and the final version incorporates verbatim a suggestion she made.[1/]

In my July 26 oral testimony to the House, I was asked by Representative Grams whether giving the President a "heads-up" violated an ethical rule.[2/] I responded that I "quite firmly" believed it did not, and that we had consulted on this point with OGE, which informally agreed with my conclusion. TR. July 26, 1994, at 189. In a later exchange with Representative Bachus, I

1/ In a November 8, 1995 letter to the Committee from Mr. Potts and Ms. Ley supplementing their testimony earlier that day (attached at Exhibit B), OGE also noted:

> Jane Ley and Leslie Wilcox in their discussions with Jane Sherburne and Sharon Conaway on the afternoon of July 21 did indicate that, based upon their review of the transcripts of all the Treasury and White House officials with whom Mr. Altman had spoken about his recusal concerns, they did not see that any standard of conduct had been violated in those discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong.

2/ The relevant portions of my July 26 testimony are attached at Exhibit C.

stated that, with respect to the recusal issue, the conduct by the White House officials involved "did not violate any government standard of ethics for the White House people, and [OGE] has agreed informally with that conclusion." Id., at 199-200.

Mr. Bachus asked me whether I was testifying that OGE "ha[d] rendered an opinion saying that the White House staff are not guilty of any ethical violation." Id., at 200. I responded: "Well, I can read it to you precisely, but they have informally concurred in our conclusion. Let me just read it to you." Mr. Bachus interjected that OGE had stated that its investigation dealt only with Treasury officials and that it had not yet been completed. I responded that OGE "did advise us, based on the factual information we ha[d] given them about the White House people, that they concur informally in our judgment that the White House people did not violate any of these standards." Id., at 200-01. In order to avoid ambiguity on this point, I stated that "I ha[d] put precisely into the statement I ha[d] read" what OGE had advised me and my staff with respect to its concurrence in my conclusions.[3/] Id., at 201.

[3/] The language to which I was referring appears at pages 6 and 8 of my report. The report states on page 6:

> The Office of Government Ethics -- the agency charged with interpreting and applying the Standards of

On August 5, 1994, ten days after testifying in the House, I appeared before the Senate Banking Committee.[4/] In my opening statement to the Senate committee, I testified that, "based on the facts as I reported them to this nonpartisan, Office of Government Ethics, that office has informally concurred" in my conclusion that the White House officials had not violated any ethical standard.[5/] TR. Aug. 5, 1994, at 8 (emphasis supplied). I also testified in response to a question that OGE had "informally confirmed my conclusion that no White House official violated any ethical standard with respect to

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Conduct -- agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interest, does not violate the Standards. On the basis of my review, the information was not used for such a purpose.

The report states on page 8:

> As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty-Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

4/ The relevant portions of my August 5 testimony are attached at Exhibit D.

5/ I made the same point in my written submission to the Senate Committee on pages 1 and 2, attached at Exhibit E.

th[e] recusal issue." Id., at 8-9. In a later exchange with Senator D'Amato, I stated:

> Meanwhile, we, I, we were doing a fact-finding report within the White House. The Office of Government Ethics didn't have time at the time these hearings began to give us the same sort of detailed formal opinion that they were able to give to the Treasury about the Treasury officials.
>
> So we gave them a draft of my factual statement which was attached to my House statement and they went over that and they went over my actual statement itself and approved the words used in that statement about informally concurring.

Id., at 27-28.

I believe I made very clear in my 1994 testimony that OGE was concurring informally in my interpretation and application of OGE's regulations as applied to my fact-finding -- which did not differ in any material detail from the IGs' fact-finding about the very same contacts between White House and Treasury officials -- and not in my report as a whole. A fair reading of my entire 1994 testimony could not possibly conclude that I suggested that OGE had verified my findings of fact. And it certainly was not my intent to do so.

Subsequent Contact with OGE in 1994

I did not view my 1994 testimony as ambiguous at the time and was not given any reason to do so. The day after my House testimony, an attorney on my staff sent to Ms. Ley for her

review all the excerpts from my testimony in which I referred to OGE. Ms. Ley did not raise any question with me about any aspect of my testimony; nor was anything brought to my attention suggesting that Ms. Ley raised any question with anyone else.

Moreover, my telephone records reflect that I spoke with Mr. Potts on another matter on August 1, 1994, six days after my House testimony and before my Senate testimony. He did not raise any questions about my testimony during that conversation. Approximately one month later, on September 12, I presented the keynote address at Mr. Potts' invitation at OGE's annual Ethics Conference in Baltimore. Mr. Potts sat next to me during the conference and introduced me to the attendees. Again, he raised no questions or concerns about my earlier testimony concerning OGE's review of my investigation.

1995 Testimony of Stephen Potts and Jane Ley

Over one year thereafter, Mr. Potts and Ms. Ley testified before the Committee on November 8, 1995.[6/] Mr. Potts testified that he did not recall that I had advised him that I was conducting an investigation into the conduct of White House officials in connection with the Treasury/White House contacts, and that he had not become aware of my investigation until July

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6/ The relevant portions of the testimony of Mr. Potts and Ms. Ley are attached at Exhibit F.

25. He also testified that he had not reviewed "any investigation, process or results of the White -- you know, conducted by the White House." TR. Nov. 8, 1995, at 80-82.

Because Mr. Potts was not our main point of contact at OGE, it is entirely possible that his recollection is incomplete with respect to events that occurred sixteen to seventeen months earlier. As discussed above, however, my staff and I met with Mr. Potts and others from OGE on June 20 to discuss the investigation I had been directed to make and to ask for OGE's assistance; and, of course, the existence of my investigation was publicly announced ten days later on June 30.

Mr. Potts testified that it was possible that I had spoken with someone else at OGE concerning my investigation. Indeed, Ms. Ley, OGE's Deputy General Counsel, was our main point of contact. Ms. Ley readily acknowledged that OGE had been told of my investigation and had been asked to provide me and my staff with guidance on interpreting its regulations and that it had done so. She testified:

> One of the attorneys in my office and I went to a meeting at the White House Counsel's, in Mr. Cutler's office. We met with Jane Sherburne and Sharon Conaway. We were given an oral proffer of facts by them as to what their internal investigation was. And we had some frank discussions about the application of the standards of conduct at that time.

> I came away from that meeting feeling that they did, in fact, want to refer to the Office of Government Ethics, or at least those conversations, and so I asked if they would provide to us a copy of whatever they were intending to have written or submitted that referred to OGE.

Id., at 88.

When asked whether she did in fact review a draft of my testimony, Ms. Ley responded that she certainly reviewed "that portion that purported to be factual, I guess, or somehow described what had happened and anything in which they had, were going to refer to in analysis [sic] in which they were going to refer to OGE."[7/] Id. Ms. Ley also testified that she had made suggestions for changes, all of which were incorporated in substance. Id. She stated: "I didn't ultimately -- they weren't the exact words that I had seen before when his final testimony came out. But his final testimony was not in -- his final written testimony was not an incorrect statement of anything." Id.

Further proof that OGE reviewed drafts of my report is contained at the end of OGE's own report on the conduct of the Treasury officials. The final section of the OGE report,

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7/ Ms. Ley testified that she did not believe she had received a draft of my entire report. Ms. Ley was sent at least two entire drafts of my report and the attached factual chronology of events on or about July 22 and on or about July 25, 1994.

attached at Exhibit G, notes that my report described two additional Treasury/White House contacts not identified by the Treasury/RTC IGs, and concludes that these additional contacts by the Treasury officials did not violate OGE's ethical regulations.

I agree with Ms. Ley's statement -- and my 1994 testimony reflects this -- that OGE "didn't conclude about the conduct of the individuals. We didn't make any conclusions about the conduct of the individuals in the White House." Id., at 84. What I had asked from OGE, and what OGE had ultimately done, was to concur in my interpretation and application of its regulations to the facts concerning the White House officials as I had found them. I did not ask OGE to pass on the accuracy of my factual findings and conclusions about how individuals in the White House had conducted themselves, as I had thought I had made plain in my 1994 testimony.

As discussed above, there were two main ethical issues addressed in my report: the "heads-up" issue -- i.e., the receipt by the White House of confidential information; and the recusal issue. Ms. Ley testified that my staff had discussed with her the use in my report of the phrase "informally concurred" in connection with what I refer to as the "heads-up" issue. She testified that if I had used the phrase in that context, she "would not have objected." Id. This response

clearly puts to rest any suggestion that I made inaccurate statements about OGE's views on the "heads-up" issue.

The record is not quite as easy to parse with respect to the recusal issue, but the conclusion is the same. Ms. Ley was asked at the hearing whether my statement in 1994 was accurate that OGE "has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal issue." At that point, according to the transcript, she responded in a somewhat ambiguous way: "That's certainly not what I could have said if I were in [Mr. Cutler's] position." Id., at 93. Later that day, Mr. Potts and Ms. Ley submitted a letter to the Committee to clarify this ambiguous response. The letter, attached at Exhibit B, states that Ms. Ley and Ms. Wilcox had indicated to my review team that, based on their review of the transcripts of depositions taken by the IGs of all the Treasury and White House officials with whom Mr. Altman had spoken about whether he should recuse, "they did not see that any standard of conduct had been violated in these discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong."

Thus, when OGE's representatives specifically addressed the two main issues of ethical concern discussed in my report, "heads-up" and recusal, they confirmed that OGE had informally

agreed with my interpretation of its regulations with respect to both.

I believe it may be helpful to comment on one other exchange between the Committee and the OGE representatives at the November 8 hearing. At the hearing, Ms. Ley was asked the following broad question by Committee counsel:

> But would you have objected in the context of informally concurring with his conclusion that no violation of any ethical standard occurred by White House officials?

Ms. Ley's response was: "I don't think that's a correct -- that's not a correct statement of anything we did." TR. Nov. 8, 1995, at 84. OGE's November 8 letter tried to clarify this exchange. It stated: "Our response to the earlier question remains correct; OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official."

To understand this response, it is necessary to read it in light of: (a) OGE's explicit statements that it did not question the accuracy of my 1994 characterization of its informal concurrence with respect to the "heads-up" and recusal issues; and (b) the inaccurate characterization of my testimony in the Committee question Ms. Ley was answering. The record shows that Committee counsel's question to Ms. Ley, as quoted above, left

out the key qualification I made in my 1994 testimony: that OGE's informal concurrence was "based on the facts as I reported them to th[e OGE]." TR., Aug. 5, 1994, at 8. I never stated that OGE informally concurred in my legal conclusions without making clear that OGE's concurrence was based on my findings of fact. Since the predicate for the "earlier question" put to Ms. Ley was itself incorrect, and since Ms. Ley specifically confirmed my characterization of OGE's position on the "heads-up" and recusal issues, no adverse inference can reasonably be drawn from her answer.

My November 1995 Testimony

I now turn to my November 9 testimony, the relevant portions of which are attached at Exhibit H. At that time, I had not seen the November 8 hearing transcript, and I was not shown OGE's letter of November 8 until just before I testified. I had no opportunity to check my 1994 testimony against the November 8, 1995 testimony of the OGE witnesses or the OGE letter of November 8. Somewhat taken aback by what I had been told about Mr. Potts' testimony the day before and by the above statement in OGE's letter, I testified in response to questions about OGE's letter that I "may have transgressed" when I testified in 1994 that, "based on the facts as I reported them to this nonpartisan Office of Government Ethics, that office has informally concurred." TR.

Nov. 9, 1995, at 33-34. I said this because, although I had repeatedly stated in my 1994 testimony that OGE was concurring informally in my interpretation of its rules as applied to my fact-finding, I was uncertain whether there might have been one or two occasions in my 1994 testimony where I might have made shorthand references to OGE's informal concurrence in my "report" rather than in my interpretation of OGE's regulations. I therefore stated in my November 9, 1995 testimony that, to whatever extent there may have been ambiguities in my 1994 testimony, I wished I had made more clear each and every time I spoke about OGE precisely what I had meant.

When pressed by Senator Bennett on whether I in fact thought I had "transgressed," I testified:

> I don't think I did, but obviously some of the OGE people appear to think I did. What I meant to say in that statement is that they agreed informally, where they had authorized, perhaps in a different context, but they agreed informally with the interpretation of their regulations based on a state [sic][1] of facts which I had found and which I felt responsible for.
>
> It was not their statement of facts. I did not mean to say that they concurred in my findings of facts, but only that based on my findings of fact, as we had set them forth both in oral form and in drafts of the final report which were given to OGE, that based on my findings of fact they agreed with the interpretation of their own regulations that we had applied after extended discussion with them about the meaning of the regulations.

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[1] "State" may be a dictation error for "set."

Id., at 76-77. Senator Bennett then asked:

> The Chairman came back to the sentence in the letter from Mr. Potts and Ms. Ley, "OGE did not informally concur in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official."
>
> And the Chairman asked you is that statement correct or not correct, and I didn't hear a yes or no out of you. Are you prepared to say yes or no?

Id. I responded:

> My answer would be the same. I believe they did concur in our interpretation of their regulations as applied to a set of facts which I had found for which they did not accept responsibility. But on that set of facts, I believe they did informally concur with my application of their regulations to those facts.
>
> . . .
>
> Apparently, my answer in the testimony is inconsistent with what they thought. I think their statement contains as many ambiguities as mine. I believe they do agree with my interpretation of their regulations.

Id.

Since my testimony on November 9, I have carefully reviewed the transcripts of my 1994 testimony and the text of my annexed report and its attachments. It turns out that, despite the concerns I expressed on November 9, 1995, I never did say in my 1994 testimony and its annexes that OGE had informally concurred in my conclusions without making clear that its concurrence was in my interpretation of OGE's regulations as applied to my findings of fact.

Conclusion

I did not misstate the extent of OGE's review of my report in my 1994 testimony. As Ms. Ley testified, OGE reviewed drafts of my report. OGE suggested a number of editing changes, all of which were substantially incorporated in the final report. Ms. Ley testified that nothing in my written testimony was inaccurate. And OGE has explicitly stated that it did not question the accuracy of my characterization in 1994 of its informal concurrence with respect to the only two issues I addressed, the "heads-up" and the recusal issues. In sum, the record taken as a whole makes my meaning very clear.

Sincerely,

Lloyd N. Cutler

Lloyd N. Cutler

Attachments

The President is, after all, the President, and the President is entitled to look into the propriety of the behavior of his immediate White House staff. It was obvious we could not employ the Department of Justice for that purpose, and it would be odd to me to employ the Treasury Inspector General for that purpose except for factfinding convenience.

Given the very short timetable that ultimately developed, we had between July 1st, when

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we were allowed to begin our investigation by Mr. Fiske, and July 26th, I think it was, when I actually had to testify.

Q When did you become aware of the fact that the Treasury and RTC Inspectors General would be conducting some factfinding in connection with the Treasury investigation?

A Not until approximately the 1st of July.

Q Well, were you aware of the initial announcement that Mr. Bentsen made concerning the fact that he had asked the Office of Government Ethics to proceed with an investigation of the Treasury side?

A Yes, I was certainly aware of that at the time. If I recall the dates expressly, it was not until Mr. Fiske released both the Treasury and the White House to conduct their own investigations, and that was late in June, quite late in June.

Q Did you consider having the Office of Government Ethics review the actions of White House counsel's personnel?

A Yes, I did. I knew and Secretary Bentsen

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learned that the Office of Government Ethics has no factfinding capability of its own. But I did take steps to ask the Office of Government Ethics if on the basis of the facts that we presented to them they would review our conclusions as to whether there had been any ethical improprieties, and they did so.

Q When you say review your conclusions, do you mean furnish you with a report along the lines of the report that they furnished to the Secretary of the Treasury?

A We wanted them to furnish such a report, but they said, having been asked by the Secretary of the Treasury to prepare such a report for him, they would not have time to do a full report for us.

But they were willing to review the conclusions we had reached, the ethical conclusions we had reached based on our factfinding and the other information we had available and to let us know whether they disagreed with any of those conclusions. That is reflected in the report itself.

Q Did you consider asking the Office of

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Government Ethics to broaden their examination and their use of the Inspectors General personnel to conduct factfinding of the White House counsel's office personnel so that they could furnish a report not only to the Secretary but to you and to the President?

A Well, we did in the end, as you know, make use of the investigations being conducted by the Treasury Inspectors General in the sense that we gave up or we did not ourselves interview all of the Treasury people. We only interviewed one or two of the Treasury people. We relied on the investigations or I should say the depositions being prepared by the Treasury Inspectors General.

So far as the rest of the Treasury people were concerned – and of course we made our own people, White House people, available to the Treasury Inspectors General.

Q When did you decide to rely in part on the depositions of the Inspectors General in terms of conducting your own review?

A It would have been early in July.

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Remember, the time frame was compressing on us all the time. We thought that and Mr. Fiske's people led us to believe that he would be able to conclude his own investigation and let us begin the ethical investigation much earlier than the beginning of July.

At the same time, the committee was organizing itself, and it was scheduling hearings to begin the last week of July. So, the time kept getting shorter and shorter.

Once Secretary Bentsen had come to the conclusion that he would have his factual investigation of the Treasury people done by the Treasury Inspectors General, we thought that gave us an opportunity to save time and work and that we would not have to interview every Treasury witness.

Q When did you learn specifically that the Secretary had decided that the Inspectors General should be the factfinders working to produce the facts for the OGE report?

A Well, it must have been close to the beginning, a few days into July. As you know, the

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Secretary – Secretary Bentsen originally asked the OGE to conduct the investigation, and since they had no factfinding capability, it was arranged, and whether it was OGE's suggestion or the Treasury's suggestion, I don't know, that the Treasury Inspectors General would do the factfinding investigation.

Q Wasn't that arranged sometime in the spring

EXHIBIT A

TESTIMONY OF LLOYD N. CUTLER
Before the
U.S. House of Representatives
Committee on Banking, Finance and Urban Affairs

July 26, 1994

Mr. Chairman and Members of the Committee,

My name is Lloyd Cutler. Since March 10, I have been Special Counsel to the President. Since the beginning of April, when Mr. Bernard Nussbaum's resignation became effective, I have been performing the duties of Counsel to the President. I had previously held this position under President Carter, and in 1989 I was a member of President Bush's Commission on Federal Ethics Law Reform.

I am here today to present the White House position on the ethical propriety of certain White House contacts with Treasury officials concerning the Resolution Trust Corporation's inquiries into a failed savings and loan called Madison Guaranty.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight Committees of the Congress. We have done so. No White House staff witness has refused to appear. We have produced thousands of pages of documents requested by the Committees. We appreciate the Chairman's statement that we have cooperated fully. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

In our system, the President and Congress must cooperate on smaller as well as larger matters. We are opening these Madison Guaranty/Whitewater hearings on the very same day that Prime Minister Rabin of Israel and King Hussein of Jordan will address a joint session of Congress, one day after signing the Declaration of Washington with the President as witness, outlining the principles for a treaty of peace between their countries. There could be no more profound demonstration of how diligently the Congress and the President can work together to make the national government as open and productive as we can.

The Treasury-White House Contacts.

As you know, Independent Counsel Robert Fiske has interviewed, deposed or taken before the Grand Jury every Treasury and White House official involved in the so-called Treasury-White House contacts during the period September 1993 through February 1994. These contacts originated in the Fall of 1993, at the time the RTC reportedly made a number of criminal referrals to the Department of Justice of various matters involving a failed S&L called Madison Guaranty. A criminal referral is a recommendation that the Department

consider undertaking an investigation and, if the evidence warrants, bringing a criminal charge against one or more persons; the final decision, of course, is up to the Department. According to press reports, these referrals apparently mentioned, among other matters, a 1978 joint real estate venture called Whitewater between the Chairman of Madison Guaranty (Mr. James McDougal) and President and Mrs. Clinton, as well as some campaign contributions to a Clinton gubernatorial campaign.

As you also know, Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any non-criminal ethical standards or gave rise to any other concerns. As to the White House staff members, those are the questions Chief of Staff Mack McLarty asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

In summary, I have concluded there was no violation of any ethical standard, but that it would have been better if some of the issues that arose had been handled differently than they were. I have also recommended measures to assure that future contacts between the White House and executive branch agencies with law enforcement responsibilities will be beyond reasonable challenge.

Before discussing the Treasury-White House contacts and the ethical questions they present, I want to stress that nothing happened as a result of these contacts. No White House staff member made any effort to change any decision by the RTC and no decision by the RTC was changed. These contacts had no impact on the real world of the RTC's activities.

Attached to this statement is a chronology of the Treasury-White House contacts that occurred from September 1993 through February 1994 and the substance of each, so far as I have been able to determine. Where the participants do not substantially agree on what was said, the chronology sets forth the principal differences. For the most part, the differences are the typical variations in recollection of different witnesses to months-old events, and they are not material to the question of whether the contacts were proper.

Let me summarize the main points of this chronology. The contacts generally fall into three time periods. The first set of contacts occurred in the Fall of 1993. They began on September 29, when Treasury General Counsel Jean Hanson took White House Counsel Bernard Nussbaum aside at the end of a meeting on another subject and told him that the Clintons were mentioned incidentally in an RTC criminal referral concerning Madison Guaranty. Ms. Hanson indicated to Mr. Nussbaum that the referral was likely to be the subject of press leaks and inquiries. She said she was informing Mr. Nussbaum so that the White House would not be taken by surprise. Mr. Nussbaum asked Ms. Hanson to be in

touch with his staff if there were further press developments. Over the next few weeks, Ms. Hanson spoke on a couple of occasions to lawyers in the Office of White House Counsel to report the details of continuing press inquiries. Intensifying press interest in the referrals apparently led Mr. Jack DeVore, then Treasury's Assistant Secretary for Public Affairs, to arrange a meeting with White House communications and legal staff to discuss Treasury's response to the press. This meeting occurred on October 14. As far as I have been able to determine, no White House official took any action based on the information received about the referrals other than preparing to respond to press inquiries.

The second set of contacts occurred because of the then-impending expiration (on February 28, 1994) of the statute of limitations for the RTC to file certain potential civil claims arising out of the failure of Madison Guaranty. As you may recall, Senator D'Amato was reminding the Senate daily of the shrinking period during which certain possible civil claims related to the Madison Guaranty failure could be pursued by the RTC, and RTC officials had provided a briefing on this subject to members of Senator D'Amato's staff on January 24. Mr. Roger Altman, the Deputy Secretary of the Treasury and acting CEO of the RTC, sought a meeting with White House officials on February 2 to provide a similar briefing to the White House. Ms. Hanson accompanied Mr. Altman to the meeting. Using talking points prepared by Ms. Hanson, Mr. Altman described the various procedural options available to the RTC for preserving potential claims when the expiration of a statute of limitations was imminent.

At the same meeting, Mr. Altman also raised the issue of his possible recusal from decisions about how to proceed with respect to possible Madison-related claims potentially involving the Clintons. I will refer to this issue in greater detail later in this statement.

The third set of contacts relates to the RTC Oversight Board hearing before the Senate Banking Committee on February 24. By that time, Congress had already passed and the President had promptly signed a law extending the statute of limitations on potential RTC civil claims until December 31, 1995, when the RTC is scheduled to be wound up.

At the hearing, in response to questioning about contacts with the White House related to the Madison matter, Mr. Altman did not mention that he had raised the question of his possible recusal at the February 2 meeting. Mr. Altman also did not mention the September 29 and October 14 meetings regarding press inquiries about criminal referrals. Following the hearing, lawyers from the Office of the White House Counsel and other White House staff met to determine whether Mr. Altman's hearing testimony might require supplementation. As a result, White House Staff Secretary John Podesta telephoned Mr. Altman and expressed concern with Mr. Altman's omission of the fall meetings and of his possible recusal as a subject of discussion at the February 2 meeting.

The day after the hearing, *The New York Times* published a story about White House and Treasury meetings on the Madison investigation. That afternoon, Mr. Joshua Steiner, the Treasury Chief of Staff, reported to Mr. Podesta of the White House staff that Mr. Altman had just informed an editor of *The New York Times* that he had decided to recuse. This news took several at the White House by surprise and led to a series of telephone calls which I will also refer to later in this statement.

The Standards of Ethical Conduct.

The ethical rules applicable to executive branch employees are set forth in the Standards of Ethical Conduct issued by the Office of Government Ethics. Three of the standards are arguably relevant to the Treasury-White House contacts.

(1) A Standard of Conduct provides that an employee shall not participate in a matter without the prior authorization of a designated ethics official if the employee "determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter." 2635.501 and .502. There are two reasons why this standard was not violated. First, in connection with the vast majority of the contacts, no White House official did anything that could be regarded as "participating" in the Madison Guaranty matter before the RTC, or in any other Madison Guaranty matter affecting his or her own personal interests or those of anyone else. Second, whether there may be an appearance of partiality depends in part on whether the employee has certain types of private relationships with persons interested in the matter at issue. President and Mrs. Clinton were arguably interested in some RTC actions concerning Madison Guaranty. But on the basis of my review, none of the White House staff members involved in the contacts has any of the types of financial or family relationships with President or Mrs. Clinton that would raise the issue of partiality. It is not "partiality" for presidential aides to receive information or express opinions relating to the interests of the President for whom they work. For example, a White House staff member could receive information or express opinions about a congressional proposal to raise or lower the salary of the President without violating this standard. There is no other evidence to show that a question concerning the impartiality of any of the staff members should reasonably have arisen.

(2) An executive branch employee may not use his public office for the private gain of himself or his close friend, relative, or private business associate. 2635.702. Stated a slightly different way, he may not use his Government position "in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise," to himself or his close friend, relative, or private business associate. 2635.702(a). On the basis of my review, none of the staff members involved in the contacts sought private gain for himself or anyone else covered by this standard.

(3) Executive branch employees may not use non-public information to further their own private interests or those of anyone else, whatever their relationship with the person. 2635.703. No White House staff member attempted to further anyone's private interests with any non-public information from the Treasury.

Two main ethical issues arise with respect to these events. The first is whether it violated any ethical standard, or was otherwise inappropriate, for the White House to receive a "heads-up" from a Treasury official that the RTC was making criminal referrals that made incidental mention of President and Mrs. Clinton, and thereafter for Treasury and White House officials to discuss how to respond to press leaks and queries about the matter.

The second issue relates to whether it violated any such standard, or was otherwise inappropriate, when Mr. Altman told White House officials he was considering whether he should recuse himself from participation in any Madison Guaranty matter, for White House officials to have given Mr. Altman their views about this subject.

To put these questions of propriety in perspective, one must consider the constitutional structure of the Executive Branch. The Constitution vests the entire executive power in the President alone. Congress has passed various laws redistributing that power within and outside the executive branch, such as the laws purporting to vest power in various Cabinet Secretaries, the laws creating various fully independent agencies like the Federal Reserve Board and the Federal Communications Commission, and the recently revived law creating the office of Independent Counsel. But the Department of the Treasury remains wholly within the Executive Branch, and the RTC is not a fully independent agency in the same sense as the Federal Reserve and the FCC. The RTC acts under the general direction of a chief executive appointed by and answerable to the President, and under the general supervision of an Oversight Board which includes the Secretary of the Treasury and a number of other Executive Branch officers directly or indirectly answerable to the President. In my view the RTC, like the Environmental Protection Agency, is an independent agency within the executive branch.

Of course, the constitutional role of the President as the sole holder of the executive power does not mean that the White House can properly seek to influence executive branch law enforcement investigations involving other high government officials or the President himself. One reason we have an Independent Counsel law is to prevent this from happening. It would of course be inappropriate for the White House to try to influence investigations under that law. But it is entirely appropriate for the White House to receive a heads-up promptly after the Attorney General makes a decision to seek the appointment of an Independent Counsel, so that the White House will not be surprised by press questions. That has been the practice followed ever since the Independent Counsel law was enacted in 1977.

The same principles apply when high officials are directly or indirectly involved in law enforcement investigations within the jurisdiction of other executive branch agencies, such as the Environmental Protection Agency, the Food and Drug Administration, and the RTC. (Strictly speaking, the RTC is not a law enforcement agency, but it can make criminal referrals to the Department of Justice, and it can bring civil actions against directors, officers and borrowers when failed savings and loans are taken over by the government.)

The heads-up principle applies with particular force to criminal referrals by the RTC or other agencies to the Department of Justice. Because of their preliminary nature, it is the usual practice, in fairness to those involved, not to make a public announcement that such a referral has been made. I understand that the RTC and the FDIC have made more than a thousand criminal referrals to the Department, of which only a small percentage have been found meritorious enough to warrant an actual criminal prosecution.

The heads-up received by the White House that the RTC was making criminal referrals concerning Madison Guaranty did not in my opinion involve any impropriety or breach of any ethical standard by any White House official. None of them made any effort to influence the RTC's decision.

On the same reasoning, there was no impropriety or breach of any ethical standard in the meeting requested by Treasury officials and held on October 14, 1993, to discuss press leaks and inquiries to the Treasury concerning the unannounced criminal referrals and the responses to be made to these inquiries. It was obviously important and appropriate for the Treasury to inform the White House about the leaks and resulting press queries so that the White House could prepare itself and brief the Treasury to answer the questions being raised by the press concerning the Clintons' investment in Whitewater and their knowledge as to the campaign contributions raised by Mr. McDougal. In my opinion, those who participated acted in good faith and in compliance with existing ethical standards.

The Office of Government Ethics -- the agency charged with interpreting and applying the Standards of Conduct -- agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interest, does not violate the Standards. On the basis of my review, the information was not used for such a purpose.

Let me now come to the more difficult issue of the contacts about the statute of limitations and Mr. Altman's consideration of his possible recusal, starting with the meeting on February 2. Under the RTC statute, its chief executive is appointed by the President by and with the advice and consent of the Senate. In March 1993, pending the selection of a nominee, the President had named Deputy Secretary of the Treasury Roger Altman to serve simultaneously as acting chief executive of the RTC. Under applicable law, Mr. Altman could only serve as acting chief executive for a maximum of 120 days, expiring during July 1993, unless by that time a nomination had been sent to the Senate for its advice and

consent, in which case he could continue until the nominee took office. In July of 1993, before the 120 days expired, the President nominated Stanley Tate to the RTC post, but he ran into confirmation problems and withdrew on November 30. As a result, Mr. Altman was legally authorized to continue as acting chief executive for 120 additional days after November 30, 1993, i.e. March 30, 1994.

In January 1994, there was increasing congressional interest in the status of potential civil claims relating to Madison Guaranty and Whitewater. At that time, the relevant statute of limitations on such claims was to expire on February 28, 1994, and the RTC had not yet decided whether civil claims relating to Madison Guaranty should be brought. At a meeting requested by Mr. Altman and held with White House staff members on February 2, 1994, Mr. Altman briefed the White House staff on the procedural options available to the RTC in potential cases such as Madison Guaranty where the statute of limitations was about to expire, just as the RTC had previously briefed an interested member of Congress who had inquired about the Madison Guaranty situation.

At the same meeting, Mr. Altman also said he had been considering recusal from participation in any RTC decisions concerning Madison Guaranty, and that he had been advised to recuse by his Treasury colleagues. There is a difference of recollection among the participants as to whether Mr. Altman said he had already decided to recuse or whether he said he was still considering the matter. There is no evidence that White House personnel knew before the meeting started that Mr. Altman would raise the issue of recusal.

Mr. Bernard Nussbaum, then the White House Counsel, expressed his concern, partly because a similar question had been raised in the then pending confirmation hearings of Ms. Ricki Tigert, President Clinton's nominee for Chairman of the FDIC. In her hearing on February 1, Ms. Tigert had been asked to make a blanket recusal in any matter potentially involving President Clinton. She had replied that she would defer any decision on recusal until a particular matter came before her and would then follow the advice of the FDIC ethics officer.

Mr. Nussbaum understood Mr. Altman to say that he had been advised he had no legal or ethical obligation to recuse, but was inclined to do so anyway. Mr. Nussbaum was convinced that an Altman recusal -- in the absence of a legal or ethical requirement to do so -- might undercut the position taken by Ms. Tigert. Mr. Nussbaum expressed his view that a presidential appointee, solely because of her or his status as such, should not recuse merely because the matter tangentially involved the President. Although Mr. Altman said he would leave any Madison Guaranty decision to RTC's career officers in any event, Mr. Nussbaum said he thought these officers could be expected to act with greater fairness and professionalism if Mr. Altman did not recuse. Mr. Nussbaum also made clear that the final decision on recusal was Mr. Altman's to make.

On February 3, Mr. Altman advised the White House that he had decided not to recuse for the time being. He maintained that position until February 25 (a day after his testimony before the Senate Banking Committee) when he announced his recusal.

As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty-Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

However, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3 to defer recusal. Even though this did not in my opinion violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in good faith. But in my judgment, this discussion should not have taken place. And once the question was raised, I believe that in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, the White House should have encouraged Mr. Altman to recuse.

However, it is important to note that during the period before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter.

Let me turn briefly to whether it violated any ethical standard for White House officials to receive the February 2 briefing as to RTC's statute of limitations options. This same briefing was being given to various members of Congress, and was public information. It was in the nature of a heads-up to the White House, and no White House participant said anything that could have affected how the RTC exercised its options. Moreover, that issue was mooted ten days later when Congress passed and the President signed the law extending the limitation period until December 31, 1995, or the winding-up of the RTC, whichever comes later. There was no discussion of the merits or substance of any possible claims relating to Madison Guaranty.

There remain the contacts that occurred on February 25, after Mr. Altman's testimony on February 24 and after he announced his decision to recuse on February 25. In the course of a telephone conversation initiated by Mr. George Stephanopoulos, Senior

Advisor to the President, and Mr. Harold Ickes, the White House Deputy Chief of Staff, with Mr. Altman, they expressed their concern that Mr. Altman had informed *The New York Times* of his recusal decision before informing the White House. However, they made no effort to persuade Mr. Altman to change his mind. In this conversation they also expressed their surprise and dismay about reports that the RTC had retained Mr. Jay Stephens and his law firm to investigate and conduct any civil litigation on behalf of the RTC relating to the same allegations as the criminal referrals. (Let me remind you that when Attorney General Janet Reno had replaced Mr. Stephens and other holdover U.S. attorneys earlier in the Clinton administration, Mr. Stephens had strongly criticized the administration, and had later considered running as a Republican candidate for the Senate. It is no exaggeration to say he was a vocal political critic of the President.) In an earlier conversation the same day between Mr. Stephanopoulos and Mr. Joshua Steiner, Secretary Bentsen's Chief of Staff, Mr. Stephanopoulos had also expressed these concerns, and questioned how Mr. Stephens could have been considered impartial and suitable for appointment. Mr. Steiner responded that it was a done deal and should not be pursued further.

In my view, the concerns expressed by Mr. Stephanopoulos and Mr. Ickes were perfectly natural under the circumstances, and involved no ethical impropriety. They made no real effort to alter what had been done, and with respect to Mr. Stephens, Mr. Stephanopoulos was simply "letting off steam." Republican observers like Mr. Marlin Fitzwater (President Bush's press secretary) and Congressman James Leach have also dismissed the incident as trivial. As in the case of the earlier contacts, the contacts concerning the retention of Mr. Stephens had no effect on his status or on the RTC's activities concerning Madison Guaranty.

Let me turn to when the President and Mrs. Clinton learned about the Treasury-White House contacts. Mr. Lindsey informed the President of the criminal referrals early in October, shortly after the initial "heads-up" from Ms. Hanson and after the press had begun inquiring into the matter. Mrs. Clinton learned about it later in October through press reports.

The President and Mrs. Clinton do not recall learning about the discussions concerning Mr. Altman's recusal until Mr. Altman announced it on February 25. Mr. Ickes recalls that at some point he briefly informed the President of the February 2 meeting and Mr. Altman's subsequent decision not to recuse. He does not recall when that discussion took place. Mr. Ickes also recalls a similar brief discussion with Mrs. Clinton.

I also want to refer to the brief conversation between the President and Comptroller of the Currency Eugene Ludwig on December 30, 1993, which does not even deserve to be described as a contact. They were both at Renaissance Weekend in Hilton Head, along with more than a thousand others. They had a brief exchange. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr.

Ludwig about the Madison Guaranty/Whitewater matter, which was then very much in the news. Mr. Ludwig called Ms. Jean Hanson, the Treasury General Counsel, for guidance. She referred him to the White House Counsel's Office, where he reached Mr. Clifford Sloan. Mr. Sloan called his colleague Mr. Neil Eggleston, who called Deputy White House Counsel Joel Klein, who was also at Renaissance Weekend. Mr. Klein found the President and inquired about the conversation. The President said he had only wanted to get Mr. Ludwig's suggestions as to the names of experts familiar with real estate development and financing who might be willing to write articles explaining the Whitewater project to the public. Mr. Klein said it would be better to obtain such advice from someone other than the Comptroller. The President said he agreed, and would turn elsewhere. Mr. Klein so informed Mr. Ludwig.

Since the President and Mr. Ludwig never had a substantive conversation -- even about the names of experts who could write articles -- their brief encounter is hardly worth mentioning. It could not possibly have violated any applicable ethical standard or be considered a significant error of judgment.

Mr. Chairman, I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters -- matters which were properly the province of the Office of the White House Counsel. The contacts were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel participated. In retrospect, we did not meet as high a performance standard as we should have set for ourselves. We have therefore taken additional measures to assure that future contacts between the White House and executive branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994 we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel. Some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February 1993.

Second, as a result of my review, we have concluded that such contacts by staff members other than those in the White House Counsel's Office are inadvisable even with the approval of the White House Counsel, and that in the future all such contacts should be solely between White House Counsel (or Deputy) and the General Counsel (or Deputy) of the agency involved. These are the understandings already in place with the Attorney General and her Deputy, and we plan to extend them to other agencies as well.

Third, we are drafting rules of conduct for future contacts between the Office of the White House Counsel and executive branch agencies with law enforcement functions on particular investigative matters, defining the circumstances under which such contacts are appropriate or not. We will review these drafts with the agencies, and we plan to issue them promptly.

Finally, I want to point out again that none of the Treasury-White House contacts I have described had the slightest effect on the RTC's activities concerning Madison Guaranty to date, and to pledge that no such effects will be tolerated in the future.

The Fiske Report on Mr. Vincent Foster's Death.

With your permission, Mr. Chairman, let me add a word about Mr. Fiske's report on Mr. Vincent Foster's death. Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House "family." To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended upon the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I believe that report proves beyond reasonable doubt that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, "the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence that issues involving Whitewater, Madison Guaranty, CMS or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide." Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearings, and Mr. Foster's death has been found to be unrelated to these matters, we hope that all members of the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

Even *The Wall Street Journal's* editorial page – one of Mr. Foster's most persistent critics – has accepted the findings of the Fiske Report. After a year of lurid, personally invasive and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

I had hoped this thorough report would put to rest the wild rumors that Mr. Foster was murdered or committed suicide at another location, and that his dead body was then moved to Fort Marcy, as well as all the other innuendos and speculations that have been

circulated by mere gossips, by irresponsible journalists, and by persons who would harm the President and torment Mr. Foster's family to advance their political goals. It, unfortunately, has not.

So, I would ask those rumormongers to heed the words of Vince Foster's family. In a statement they released seven days ago, the Foster Family wrote: "We love Vince and miss him terribly. He was an honorable man and deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private." That is their wish. Let it be ours, as well.

Thank you, Mr. Chairman and members of the Committee.

EXHIBIT B

United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

November 8, 1995

The Honorable Alfonse M. D'Amato
Chairman, Committee on Banking,
Housing, and Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Paul S. Sarbanes
Ranking Member, Committee on Banking,
Housing and Urban Affairs
United States Senate
Washington, DC 20510

Dear Chairman D'Amato and Senator Sarbanes:

This afternoon while we were testifying, Mr. Giuffra's last question involved his reading a statement from Mr. Cutler from a 1994 Committee hearing record and asking if we believed Mr. Cutler's statement was correct. We both in essence answered that it was not. Immediately after our testimony, individuals from our Office asked if we had heard that the last question was about recusal and not about the more encompassing question we had answered earlier. Neither of us recognized that the question had changed to the more narrow issue of the recusal discussions and, therefore, we would like to submit this letter as a clarification to our testimony.

We have secured a copy of the Committee record from which Mr. Giuffra was reading and we believe that the passage he read was as follows:

> "The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal issue."

Jane Ley and Leslie Wilcox in their discussions with Jane Sherburne and Sharon Conoway on the afternoon of July 21 did indicate that, based upon their review of the transcripts of all the Treasury and White House officials with whom Mr. Altman had spoken about his recusal concerns, they did not see that any standard of conduct had been violated in those discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong.

Stephen Potts did not have any discussions with the White House about the recusal issue.

We are sorry that we did not recognize that Mr. Giuffra's question had changed from the earlier question of whether OGE had informally concurred that no individual ethical standards were violated by White House officials to the more narrow question of recusal. Our response to the earlier question remains correct; OGE did not "informally concur" in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official.

We would appreciate it if you would make this letter part of the hearing record.

Sincerely,

Stephen D. Potts
Director

Jane Ley
Deputy General Counsel

Secretary for President Bush, who dismissed it as quite understandable.

Mr. GRAMS. But you believe that was their role as members of the White House staff?

Mr. CUTLER. They did nothing. And nothing happened. Mr. Stephens is still there. No effort was made to remove him. He is presumably doing his work.

Mr. GRAMS. Also, do you think, Mr. Cutler, that informing the President by a heads up that criminal referrals had been made that would involve him and his wife as witnesses and conceivably as subjects of the investigation constitutes a violation of No. (c)(2), and that is giving preferential treatment to any person?

Mr. CUTLER. I quite firmly believe it does not. I have said before, we have consulted the Office of Government Ethics which informally agrees with that conclusion. And I am telling you out of my experience here over many years, this has happened in every administration, Republican and Democratic, because the President is the chief law enforcement officer and needs to know.

Even when the independent counsel law is invoked, before there is an announcement to the press that the Attorney General is seeking the appointment of an independent counsel, once he or she has made the decision, the President is informed.

Mr. GRAMS. Finally, you have admitted that the White House staff and others made errors of judgment that were regrettable and that should never have happened. You have said that too many people were talking to too many people on too many things.

Doesn't this suggest that the whole affair is a violation of No. (c)(6), and that is affecting adversely the confidence of the public and the integrity and of the government? I don't think you can go to a coffee shop outside the Beltway that doesn't believe Whitewater has somehow let them down as far as their faith in the government.

Mr. CUTLER. If every administration that was criticized in the press or the public about affecting the confidence of the public, if we counted them up, we would count all 40 or 41 administrations to date. There has never been an administration which was not attacked in one way or another for affecting the confidence of the people and the government, yours or ours.

Mr. GRAMS. I am talking specifically about this language.

The CHAIRMAN. The time of the gentleman has expired.

Mr. CUTLER. If you read that language that way, every administration has violated the standard of ethics.

Mr. GRAMS. They are not the subject of this hearing.

Mr. CUTLER. In other words, if you become subject to

understand it, as can you read in this morning's New York Times, has given a different interpretation of it himself.

Mr. BACHUS OF ALABAMA. On the second occasion about a month later, he wrote in the same diary that the White House was very negative in the meeting he had with him about him recusing himself. There again, they now have no knowledge of that.

Mr. CUTLER. You are going to have, I assume, both Mr. Steiner and Mr. Altman as witnesses.

Mr. BACHUS OF ALABAMA. And there is another entry which says they didn't want him to resign because they didn't want the RTC operation turned over to someone they didn't know. Do they now deny that that happened?

Mr. CUTLER. Mr. Nussbaum will be here to tell you exactly what he said, and I related it in my prepared statement.

Mr. BACHUS OF ALABAMA. You are aware of the Steiner entry?

Mr. CUTLER. I am aware of what is in the Steiner diary. But I am also wear of what both Mr. Steiner and Mr. Altman say.

Mr. BACHUS OF ALABAMA. If we take these entries in the diary as correct, that would be a violation of these ethical codes?

Mr. CUTLER. I don't know that it would be, but I have not looked into that manner. I have looked into it as far as

the White House people are concerned, and I am satisfied that it did not violate any government standard of ethics for the White House people; and the Office of Government Ethics has agreed informally with that.

Mr. BACHUS OF ALABAMA. Could I just have one clarification of what you testified to? You have stated, I think, today that the Nonpartisan Office of Government Ethics has rendered an opinion saying that the White House staff are not guilty of any ethical violations, is that right?

Mr. CUTLER. Well, can I read it to you precisely, but they have informally concurred in our conclusion. Let me just read it to you.

Mr. BACHUS OF ALABAMA. And the reason I say that is I just had a staff member call over to OGE and they say that their study, that it deals with the Treasury and the RTC, and not with the White House, and that it is not completed. And I am just wondering how you are getting, if the report hadn't been issued or completed, how you are getting--

Mr. CUTLER. They have not yet expressed an opinion as to whether the Treasury people did or did not comply with these ethical standards.

The CHAIRMAN. The time of the gentleman has long expired.

Mr. CUTLER. If I may just complete my answer, Mr. Chairman.

They did advise us based on factual information we have given them about the White House people that they concur informally in our judgment that the White House people did not violate any of these standards. What they have said I have put precisely in the statement I have read.

The CHAIRMAN. The time of the gentleman has expired.

Mrs. Maloney.

Mrs. MALONEY. Thank you, Mr. Chairman. Mr. Cutler, in today's Washington Post there is an article on Whitewater entitled, "Questions Just Kept Growing." In the article it mentions Mrs. Hanson and states that she has testified before congressional investigators that she was instructed by Mr. Altman to meet with the White House staff and inform them of the Madison probe.

Mr. Altman in this article contradicts her and states he made no such instruction and does not recall ever having instructed her to do so. My question to you is, even if he had made such an instruction, would it have been illegal?

Mr. CUTLER. I believe the answer to that is no, that while the two of them do differ in their recollections, the meeting, the heads-up itself, was perfectly proper under these ethical standards that I have referred to, and that is something I believe in which the Office of Government Ethics does agree; and it doesn't matter whether Ms. Hanson did it on her own or whether she did it on Mr. Altman's

EXHIBIT D

that review are covered in that statement.

As you also know, the Office of Government Ethics has now reviewed the factual findings of the Treasury Inspector General and has issued its formal opinion, concurring that no violation of any ethical standard -- these are the so-called Standards of Ethical Conduct for the Executive Branch -- occurred by any current Treasury or RTC official.

I have reached the same conclusion as to the White House officials and based on the facts as I reported them to this nonpartisan, Office of Government Ethics, that office has informally concurred.

But the contacts did have some troubling aspects on the White House side, as well as the Treasury side, and those are what I would like to concentrate on in my statement.

The first relates to Mr. Altman's recusal, a subject which has occupied much of this Committee's hearings.

As you know, the same Office of Government Ethics has concurred, or had concurred, with the determination of Treasury and RTC ethics officials in February of '94, that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty/Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion.

The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal

issue.

However, in my judgment, Mr. Nussbaum's statements at the famous February 2 meeting plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. And this may have influenced Mr. Altman's decision on February 3rd to defer recusal.

Even though this did not, in my opinion, or that of the Office of Government Ethics, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

And the answer to that question seems clearer when we view it in hindsight, of course, than it may have appeared to be at the time.

I am sure that everyone concerned acted in complete good faith and as several members of this Committee have noted, there are good reasons for not recusing when there is no legal or ethical duty to do so.

But, in my judgment, Mr. Altman should have decided this question without discussing it with the White House. And once the question was raised with the White House on February 2nd, I believe that, in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, if the White House were to express

Ethics, in its report, takes a position and disavows, and I look to page 2 because I was, until last evening, or might I say, late in the morning or sometime in the morning, about 12:30 or 1:00, I read on page 2, in the middle of the second paragraph, it says: For that reason, our analysis -- this is the Office of Government Ethics. It says -- Our analysis is not intended to cover, nor should it in any way reflect upon the actions of individuals who are employed by the White House.

Now the reason I mention that is because it has kind of been waved around by every member and by just about every witness who had occasion, some who were in the White House, as the report that was the clear-all.

Now, I also also note that you refer to an informal concurrence that you speak about. What is that informal concurrence?

Mr. Cutler. Well, may I explain that, Senator D'Amato?

Senator D'Amato. Please.

Mr. Cutler. You are aware of the deadlines under which the Treasury and the White House and the Office of Government Ethics were working.

We could not begin our fact-finding until Mr. Fiske informed us that he was concluded with his investigation on the subject of the contacts. And all of us got that clearance about the first of July.

The first hearing was scheduled for the House on July the 26th, and your Senate hearing was scheduled originally, I think, for the 29th, I think you began.

The Treasury, the Secretary of the Treasury had requested the Office of Government Ethics at the very beginning, shortly after the business about the contacts became public, he had asked the Office of Government Ethics to make an inquiry and report to him.

The Office of Government Ethics has no fact-finding capability. It passes and interprets the standards of government ethics on the basis of facts supplied by someone else.

So it was arranged with the Office of Government Ethics that the Treasury and RTC inspectors general would do their fact-finding report and submit that to the Office of Government Ethics, and they did this under great pressure.

Meanwhile, we, I, we were doing a fact-finding report within the White House. The Office of Government Ethics didn't have time at the time these hearings began to give us the same sort of detailed formal opinion that they were able to give to the Treasury about the Treasury officials.

So we gave them a draft of my factual statement which was attached to my House statement and they went over that and they went over my actual statement itself and approved the words used in that statement about informally

concurring.

I hope now that more time has gone on, it may be possible to get a more formal expression of view from them.

Senator D'Amato. Well, I'm not going to press that. But, again, I think it's important that we understand because too many would be ready to use this as a blanket of almost approving of their conduct.

And I would note that in your report, in fairness, that you have yourself pointed out a number of contacts that those in the White House, in the real world, shouldn't have had. They may not have broken the law, but certainly injudicious, not wise.

Certainly, at the very least, it created some of the turmoil.

There's another basic problem that I see, and I don't know how it's resolved and at a later time we'll look at it. But I think some of the people here, probably on both sides, have to raise this as a legitimate question.

Let me first say that the President is very fortunate to have such a distinguished and able advocate. And I'm not blowing smoke because I'm not one of the Washington insiders.

I don't know how long it will take. I'll probably never be. But you are. And you are because you are a man of keen intellect and ability and wisdom. And you're a terrific

EXHIBIT E

TESTIMONY OF LLOYD N. CUTLER
Before the
U.S. Senate
Committee on Banking, Housing and Urban Affairs

August 5, 1994

Mr. Chairman and Members of the Committee,

My name is Lloyd Cutler. Since March 10, 1994, I have held the position of Special Counsel to the President. Since April 4, I have been performing the duties of the Counsel to the President.

When I came aboard, White House Chief of Staff Mack McLarty asked me to undertake a review of the so-called Treasury-White House contacts. The results of that review are set forth at length in my written statement before the House Banking Committee on July 26. A copy of that statement is attached to my statement here today. I will summarize the main points.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight Committees of the Congress. We have done so, and we appreciate the Chairman's recognition of our cooperation yesterday. Although Presidents have traditionally been very sparing in allowing White House aides to testify before Congress, President Clinton has waived executive privilege as to this inquiry, and no White House staff witness has refused to appear. We have produced thousands of pages of documents requested by the Committees. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

As you know, Independent Counsel Robert Fiske has interviewed, deposed or taken before the Grand Jury every Treasury and White House official involved. Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any non-criminal ethical standards or gave rise to any other concerns. As to the White House staff members, those are the questions Chief of Staff Mack McLarty asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

As you also know, the Office of Government Ethics has now reviewed the factual findings of the Treasury Inspector General and has issued its formal opinion concurring that no violation of any ethical standard occurred by any current Treasury or RTC official. I have reached the same conclusion as to the White House officials, and based on the facts as I

reported them, the Office of Government Ethics has informally concurred. But the contacts did have some troubling aspects, on the White House side as well as the Treasury side.

Mr. Altman's Recusal.

One of these is a subject which has occupied much of this committee's hearings, namely Mr. Altman's recusal. As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty-Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to the recusal issue.

However, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3 to defer recusal. Even though this did not in my opinion or that of the Office of Government Ethics violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in good faith. As several members of the Committee have noted, there are good reasons for not recusing when there is no legal or ethical duty to do so. But in my judgment, Mr. Altman should have decided the question without discussing it with the White House. And once the question was raised with the White House on February 2, 1994, I believe that in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, if the White House were to express any opinion at all, it should have encouraged Mr. Altman to recuse himself immediately.

But even though Mr. Altman did not finally recuse himself until February 25, none of the Treasury-White House contacts resulted in actions being taken to influence the ongoing investigations of Madison Guaranty. The record of this hearing, as well as my own review and the review undertaken and supervised by the Office of Government Ethics, establish these facts:

- First, before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter, and he made it clear to the non-political RTC officials that he would not do so.

- Second, the non-political RTC officials who have testified before you confirmed that no one in the Treasury or the White House brought any pressure to bear on them, and that all of the RTC's decisions relating to Madison Guaranty were made by the career staff.

- Third, before Mr. Altman recused himself, the criminal referrals went forward to the Department of Justice.

- Fourth, the statute of limitations on Madison-related claims was extended by Congress and signed into law by the President.

- Fifth, also before Mr. Altman's recusal, the President's political critic Jay Stephens was retained to pursue possible civil claims. Mr. Stephens is still on the job.

Nothing happened -- I repeat nothing happened -- to influence the criminal or civil inquiries or stop them from going forward.

The Propriety of the "Heads-Up".

Next, I want to turn to another subject that the Committee has debated -- whether it is unusual or unethical for an agency with law enforcement responsibilities to give the White House a "heads-up" when a criminal investigation is launched involving a high government official or the President himself. I testified to the House Committee that in my opinion such a heads-up is both customary and ethical, so long as the heads-up is not misused to influence the outcome of the inquiry. My reasons are set forth in an op-ed article in last Wednesday's *Washington Post*. A copy of that article is attached, and I will be glad to answer questions about it, and how we can devise rules to make sure that no such "heads-up" will be misused.

Corrective Measures.

Mr. Chairman, there was another troubling aspect of the contacts, and that is the somewhat loose and impromptu manner in which they took place. I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters -- matters which were properly the province of the Office of the White House Counsel. The contacts were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel participated. In retrospect, we did not meet as high a performance standard as we should have set for

ourselves. We have therefore taken additional measures to assure that future contacts between the White House and executive branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994 we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel. Some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February 1993. We need to make these reminders more pointed and more frequent.

Second, as a result of my review, we have concluded that contacts relating to a specific law enforcement investigation by staff members other than those in the White House Counsel's Office are inadvisable even with the approval of the White House Counsel, and that in the future all such contacts should be between the White House Counsel (or Deputy) and the General Counsel (or Deputy) of the agency involved. These are the understandings already in place with the Attorney General and her Deputy, and we plan to extend them to other executive branch agencies with law enforcement functions as well.

Third, we are drafting rules of conduct for future contacts, including "heads-up" contacts, between the Office of the White House Counsel and executive branch agencies with law enforcement functions on particular investigative matters, especially those involving high-ranking government officials, defining the circumstances under which such contacts are appropriate or not. We recognize that clean lines of demarcation will be difficult to draw, and that in particular cases judgment and discretion will have to be applied. We will review these drafts with the law enforcement agencies, and we hope to issue them promptly. We would also be happy to discuss them with the appropriate Committees of Congress.

In conclusion, Mr. Chairman, some mistakes were undoubtedly made in the course of providing the White House with the information the President needed to perform his constitutional duties effectively. With your help we have taken and will continue to take the steps necessary to improve that process.

But let us remember: the primary issue raised in these hearings is whether the machinery of government was misused by the White House to influence the outcome of a law enforcement inquiry in its own favor. The evidence shows unequivocally that this did not occur. After thorough investigations by Independent Counsel Fiske, by the Treasury and RTC Inspectors General, the White House Counsel's Office, the Office of Government Ethics and the Senate and House Banking Committees, we now know that no White House or Treasury official took any action to stop or slow any criminal or civil proceeding involving Madison Guaranty. The machinery of government has not been misused.

As these hearings draw to a close, I hope the Congress and the Administration can return to their primary responsibilities -- working together to govern decisively, fairly and for the benefit of all the people.

Vince Foster's Death.

With your permission, Mr. Chairman, let me add a word about your hearing last Friday concerning Mr. Fiske's report on Mr. Vincent Foster's death. Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House "family." To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended upon the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I believe that report proves beyond reasonable doubt that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, "the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence that issues involving Whitewater, Madison Guaranty, CMS or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide." Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearings, and Mr. Foster's death has been found to be unrelated to these matters, we hope that the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

Even *The Wall Street Journal's* editorial page -- one of Mr. Foster's most persistent critics -- has accepted the findings of the Fiske Report. After a year of lurid, personally invasive and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

In a statement they released ten days ago, the Foster Family wrote: "We love Vince and miss him terribly. He was an honorable man and deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private." That is their wish. Let it be ours, as well.

Thank you, Mr. Chairman and members of the Committee.

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POTTS: I don't remember the page, but that is correct. We did not purport to give any advice to Secretary Bentsen about the conduct of officials at the White House.

GIUFFRA And did there come a time when you provided any advice to Special Counsel to the President Cutler with regard to the propriety of the conduct of White House employees?

POTTS: I did not.

GIUFFRA Now, you had several meetings with Mr. Cutler during this period, am I correct?

POTTS: I had two meetings in person as I recall, one was on June 20th and another one on July 11. One of those had to do with the propriety of the contacts. The other one did not.

POTTS: It was a subject unrelated to the matter under investigation.

GIUFFRA: Now I believe at your deposition you testified that when you met with Mr. Cutler on July 11 he had initiated that meeting.

POTTS: That's correct.

GIUFFRA: Now, at this meeting on July 11, did Mr. Cutler advise you that the White House was conducting its own internal review of Treasury-White House contacts?

POTTS: I don't recall that he did. My recollection of that meeting was it was about the process that was going to be undertaken and we were explaining that the investigation was going to be conducted by the two IGs and that we would then take their report, and the transcripts, and the underlying material, and base our analysis of those facts in determining whether we perceived that there were any violations of the standards of conduct.

GIUFFRA: Now, do you recall Mr. Cutler asking you to attend a second meeting on July 25th?

POTTS: He did, over the telephone he asked me to attend the meeting, yes.

GIUFFRA: And during that telephone conversation did Mr. Cutler indicate to you that he thought that OGE would quote/unquote: "benefit" from quote: "hearing what work the White House had done in the course of its internal investigation"?

POTTS: Yes he did.

GIUFFRA: And initially you indicated that it wasn't a, you thought, perhaps, it might not be a good idea to meet with Mr. Cutler?

POTTS: That's correct.

GIUFFRA: And ultimately you changed your mind and decided to meet with Mr. Cutler?

POTTS: No, I did not meet with him. Actually two of my staff members. I decided it would not be a good idea for me to personally meet. So I did not meet with him.

GIUFFRA: Well why did you not believe it was a good idea for you to personally meet with Mr. Cutler?

POTTS: Simply because I wanted to maintain both the fact and appearance of our independence, and mine specifically, in performing the analysis of the facts and the advice that we were going to give to Secretary Bentsen.

GIUFFRA: Now did the Office of Government Ethics approve the results of Mr. Cutler's internal review in any way?

POTTS: No, not at all.

GIUFFRA: Did you pass judgement on Mr. Cutler's review in any way?

POTTS: No. In fact up until that, I think it was on July 25, was the first time that I knew that they were conducting what you would describe as an investigation rather than merely closely monitoring and following what was going on.

GIUFFRA: Now Mr. Cutler was not an independent, statutory inspector general, correct?

POTTS: Of course not, no. He was Counsel to the President.

GIUFFRA: He served at the pleasure of the President?

POTTS: Right.

GIUFFRA: And you were aware that members of the White House Counsel's office were involved in the investigation?

POTTS: Correct.

GIUFFRA: Had engaged in contacts? Mr. Sloan and Mr. Eggleston (PH)?

POTTS: Right.

GIUFFRA: And you also, were you aware that Mr. -- strike that. Normally an independent -- excuse me -- inspector general is not situated in the office of the persons with whom he is investigating. Typically kept in a separate location. Is that your experience?

POTTS: I'm not quite sure I follow.

GIUFFRA: For example, the RTC IG is not located in the main RTC headquarters.

POTTS: I'm not sure that I am aware that that's true. I mean, they're independent, but I'm not -- it's not clear to me that physically they're always located somewhere else.

GIUFFRA: Based on your experience, would an independent IG normally be involved in what might be described as political spin control or damage control?

POTTS: They definitely should not be.

GIUFFRA: Now, Mr. Cutler testified before the Banking Committee that the OGE, and this is a direct quote from Mr. Cutler, had quote/unquote: "informally concurred" in Mr. Cutler's conclusion that quote: "no violation of any ethical standard" close quote, occurred by any White House official.

He further testified in response to a question from then-Ranking Member D'Amato that the OGE had approved of his use of the words "informally concurring." Now, did your office ever officially approve of the use of the words "informally concurring."

POTTS: I did not.

GIUFFRA: Was that an accurate statement by Mr. Cutler, as far as you're concerned?

POTTS: I did not ever review any investigation, process or results of the White -- you know, conducted by the White House.

GIUFFRA: So you did not...

SARBANES: Could Mr. Giuffra give us a citation for what he's quoting there?

GIUFFRA: Yes, Senator. Two places -- FDCH Congressional testimony, which I can provide to you.

SARBANES: Is it in this hearing book?

GIUFFRA: Yes, the statement from Mr. D'Amato is at page 743 of the hearing book.

SARBANES: I thought you were quoting Mr. Cutler?

GIUFFRA: Yeah, I am quoting Mr. Cutler in response to a question from Mr. D'Amato.

SARBANES: Seven forty-three?

GIUFFRA: Yes, sir.

Now, Mr. Potts, it was your testimony that you did not informally concur in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official in connection with these Treasury-White House contacts? Is that right?

POTTS: Let me make sure I understand the timing that we're talking about. I mean, this is prior to the issuance of our report? Or something...

GIUFFRA: This would be after the issuance of your report when he testified before the Senate Banking Committee on August 5, 1994.

POTTS: Because, I mean, in one sense, if -- I mean, I don't recall doing that specifically, but of course, at that point, we had issued our report, and our analysis was that neither Messrs. Altman or Ms. Hanson or Josh Steiner had violated the code of conduct, and I gather that was the same conclusion that the White House reached, but I don't -- there was no formal review of some -- I did not review some formal investigative report and analysis and conclusion of the White House and concur in it.

GIUFFRA: And, in fact, do you recall Mr. Cutler, or anyone from his office coming to you and asking you if he could say that you informally concurred in his conclusion?

POTTS: I don't recall that. Now, you know, it's possible that someone, either Mr. Cutler or someone else said -- contacted someone else in my office and, you know, maybe Ms. Ley has some recollection of that.

GIUFFRA: Ms. Ley, did Mr. Cutler or anyone from his office ask you whether the use of the words "informally concur" was OK with the Office of Government Ethics?

LEY: Not in that context, but in another.

GIUFFRA: What was the context in which you were asked?

LEY: It was a discussion of the use of, or the application of the confidential information provision in our standards of conduct and the discussion was: was the mere receipt by an individual, could the mere receipt by an individual of confidential information, without

that individual going on to use it in some way, a violation of the standards of conduct? And we said no. The mere receipt would not be. And they said if we said the mere receipt, would you agree to that? And we said, yes.

So, I think in his written testimony, the formal written testimony to the House, it talks about the mere receipt of information.

GIUFFRA: But, did you ever approve in any way of the use of the words informally concurred?

LEY: I saw drafts of his testimony prior to the time that the formal, written -- parts of his testimony. It may have been in there at some point using those two words in connection with the mere receipt of the information. And I would not have objected to it if I had seen it in that context.

GIUFFRA: But would you have objected in the context of informally concurring with his conclusion that no violation of any ethical standard had occurred by White House officials?

LEY: I don't think that's a correct -- that's not a correct statement of anything we did.

GIUFFRA: Mr. Potts, were you aware of...

D'AMATO: Saying that you did not come to that conclusion, is that what you're saying?

LEY: We didn't conclude about the conduct of the individuals. We didn't make any conclusions about the conduct of the individuals in the White House. What we concluded was: if the facts are such when you are trying to apply a standard and all you're looking at is the mere receipt of the information, can you trigger a violation of the standard? And we said, no, you can't.

D'AMATO: So, your response as it relates to this one incident, that the mere receipt, and you've said it again, does not constitute a violation. But you did not come to a conclusion informally that there was no breach of ethical conduct. Is that correct?

LEY: That's correct.

D'AMATO: OK. That's important because repeatedly -- Mr. Potts, if you're going to say something...

POTTS: I was just going to say just to make it clear that that was -- we didn't do an analysis of the conduct of the White House people. Now we did do the analysis of the Treasury people. And that was what our report to Bentsen was about.

D'AMATO: You did an analysis based upon the information that was provided to you vis-a-vis the Inspector General.

POTTS: Correct.

D'AMATO: So your conclusion is based upon their work product.

POTTS: Absolutely.

D'AMATO: And you had to depend upon their work product.

POTTS: That's exactly right.

D'AMATO: I won't go into it because you have obviously observed some of the questions and some of the reasons that some members are distressed at learning the manner in which this work product was put together. But I think it's important that we get on the record that it is not a conclusion based independently, but rather one based upon the work product that has been given to you for your analysis.

POTTS: Right, and that that was restricted to the Treasury officials. We did not do any analysis of the conduct of the White House officials as to whether or not they violated the code of conduct.

D'AMATO: That is very important and very salient because I have to tell you I was not aware of that.

GIUFFRA: Mr. Potts, were you aware that Treasury IG counsel Francine Kerner ultimately reported to Jean Hanson, who was the subject of the investigation?

POTTS: Prior to issuing our report to Secretary Bentsen, I was personally not aware that Francine Kerner was involved in the process at all. I know my deputy general counsel was aware and had expressed concerns about her involvement, which led to some communications between our office and the IG's office to spell out what her role would be and what kind of arrangements would be made to ensure that she could act on behalf of the Inspector General and not be subject to the direction of General Counsel Jean Hanson, who was the subject of the investigation. But I was not aware of all that until actually after the report was issued.

GIUFFRA: Mr. Potts, were you aware that representatives of the Office of General Counsel of the Treasury Department commented on the IG report that you based your analysis on?

POTTS: I was not at the time we issued our report, and...

GIUFFRA: Was that something you wouldn't expect to happen? I

believe you testified that way at your deposition?

POTTS: That's correct. I would not have.

GIUFFRA: No further questions.

BEN-VENISTE: Good afternoon Mr. Potts and Ms. Ley.

POTTS: Good afternoon.

BEN-VENISTE: When you were first asked to undertake this assignment by the Secretary of the Treasury, you learned very shortly that Independent Counsel Fiske was requesting that you defer further action on the request until he concluded his investigation. Is that so?

POTTS: We actually initiated the contact with Mr. Fiske because we knew that was kind of the general protocol when an independent counsel or in fact any criminal investigation was going on, that the administrative sort of investigations would be put on hold until that was completed.

BEN-VENISTE: So, the administrative or management investigation was a follow-on to the conclusion of Independent Counsel Fiske's criminal inquiry?

POTTS: Correct.

BEN-VENISTE: And that criminal inquiry resulted in the conclusion by Independent Counsel Fiske that no criminal charges were warranted and none were brought?

POTTS: That's correct.

BEN-VENISTE: So that with respect to your management or administrative inquiry, you -- if I understand correctly -- since you did not have in-house at OGE, people who were fact gathers, trained investigators, you borrowed, as it were, from the RTC IG, and Treasury IG such persons?

POTTS: I wouldn't quite characterize it that way, because in other words, the Inspector Generals did not at any time work for us. We informed Secretary Bentsen that one of the possible implications of his request to us would be that we were to investigate and so we went back to make sure that he understood that we could not be the investigators but that we would be glad to cooperate with the Inspector Generals of Treasury and RTC and work with them to help shape the questions and make sure they understood what provisions of the code of conduct were potentially implicated.

BEN-VENISTE: And your point is well taken. So it was a collegial and cooperative effort. Would that be a fair

characterization?

POTTS: I would say that is a fair characterization.

BEN-VENISTE: Now is it correct that with respect to the witnesses who gave testimony before the RTC and Treasury Inspectors General, that it was your view that those witnesses should be provided the opportunity to review their transcripts and to take possession of those transcripts?

POTTS: I don't believe I really thought about it one way or the other because I was really relying on the IGs who were very experienced and professional investigators to follow just whatever their normal procedure was in that regard.

BEN-VENISTE: Perhaps I should direct my question to Ms. Ley.

LEY: Actually I did. I said that we did not want to work from transcripts that the individuals had not had an opportunity to look at and make any changes or any suggested changes that they wished.

BEN-VENISTE: And, indeed, is it fair to say that the suggestion that the individuals be allowed to review their transcripts so that they could provide you with the most accurate and up-to-the-minute, as it were, statement of relevant facts in those transcripts, as corrected if they needed to be corrected, was a suggestion which you made?

LEY: Yes.

BEN-VENISTE: So you felt it was reasonable and indeed beneficial from your point of view for the witnesses to have copies of their depositions?

LEY: Yes.

BEN-VENISTE: So they might correct them and then provide the corrected product to you?

LEY: Yes.

POTTS: Let me just add that I don't to have any implication that I had any question in my mind learning after the fact that that was what was done that was anything except the way it should be. In other words, I think it's standard procedure for a witness to review, just as we have our depositions taken by this committee, to make sure that if there were mistakes that were made or the transcription was erroneous or something, that we make sure it's correct.

BEN-VENISTE: Let me ask you Ms. Ley, whether you had conversations with White House Counsel's Office with respect to whether in Mr. Cutler's testimony he would be referring to the OGE

investigation?

LEY: One of the attorneys in my office and I went to a meeting at the White House Counsel's, in Mr. Cutler's office. We met with Jane Sherburne and Sharon Conaway. We were given an oral proffer of facts by them as to what their internal investigation was. And we had some frank discussions about the applications of the standards of conduct at the time.

I came away from that meeting feeling that they did, in fact, want to refer to the Office of Government Ethics, or at least those conversations, and so I asked if they would provide to us a copy of whatever they were intending to have written or submitted that referred to OGE.

BEN-VENISTE: And did you review the transcript where a draft of Mr. Cutler's proposed testimony?

LEY: Portions of it. I don't believe we got all of his testimony, but certainly that portion that purported to be factual, I guess, or somehow described what had happened and anything in which they had, were going to refer to in analysis in which they were going to refer to OGE.

BEN-VENISTE: And then as a result of reviewing the draft of the proposed testimony of Mr. Cutler in which he would give the results of his investigation, did you make some suggestions for changes?

LEY: Yes, I did.

BEN-VENISTE: And were those changes accepted and made to the best of your knowledge?

LEY: Well, they certainly took them to heart. I didn't ultimately -- they weren't the exact words that I had seen before when his final testimony came out. But his final testimony was not in -- his final written testimony was not an incorrect statement of anything.

BEN-VENISTE: (AUDIO GAP) since the heart, they were incorporated in substance in the prepared testimony?

LEY: Yes.

BEN-VENISTE: Ms. Ley, is it correct that at some point, you had a conversation with Ms. Sherburne wherein you discussed whether it would be appropriate for White House Counsel's Office to review transcripts of testimony taken by the RTC and Treasury Inspectors General?

LEY: During that same meeting when they were making an oral proffer of facts, they -- they indicated something that we felt we

couldn't then give advice as to the application of the standards of conduct because we think, we thought that they had probably missed something. And I certainly suggest, I asked, I said: Have you seen the transcripts of your own employees? And she indicated that they had seen some which they had gotten from the employee's attorneys.

BEN-VENISTE: And did you not suggest it would be a good idea for White House Counsel's Office to review the transcripts?

LEY: If they were trying to do a thorough investigation of their own employees' conduct and they could have access to them, I would, I suggested they look at them.

BEN-VENISTE: Now did you have some reason to believe that Ms. Sherburne and Mr. Cutler were not trying to do a thorough and complete and comprehensive investigation?

LEY: No.

BEN-VENISTE: Do you have any reason to believe, and let me direct this to both you and Mr. Potts, on what I previously described as the big ticket item here which is whether, in your view, the report which was completed under your direction and supervision was, in fact, a fair and comprehensive and unbiased report?

POTTS: Ours, definitely I can confirm that it was.

BEN-VENISTE: And do you have any reason to believe that it was skewed in any way as the result of anyone improperly coaching or suborning or distorting the testimony of any of the witnesses who made up the body of the factual information upon which you drew your conclusions?

POTTS: I had no such knowledge.

LEY: I have none.

BEN-VENISTE: Let me turn to a question that came up today in connection with the issue of Ms. Kerner's particular circumstance wherein a firewall was created so that she might provide counsel to the Inspector General's office despite the fact that she had come from or was assigned to counsel's office. Mr. Potts, at some point, did you provide a written response to an inquiry from a member of Congress with respect to the appropriateness of Ms. Kerner's situation?

POTTS: I did. I think you're referring to a letter that I wrote to Congressman Kennedy which was replied to a letter from him asking us to answer a series of questions about our analysis.

BEN-VENISTE: And what was your conclusion, sir?

POTTS: We concluded that this was really not unusual, that actually the Inspector Generals of several large departments including

Defense, HHS, the Environment Protection Agency have that particularly, that's the way they're organized -- that the Inspector Generals rely upon the Office of General Counsel of that agency to provide the Inspector Generals with legal advice.

And then also then we noted that GAO had done a report, not at our request, that was apparently in response to some Congressman's request to specifically look into whether that arrangement was not desirable because those agencies might not receive the kind of independent advice that they should. And the conclusion of the GAO report was they could not find any evidence that the independence, the independence of the advice they received, was impaired by that kind of organizational arrangement.

BEN-VENISTE: And indeed, specifically with respect to Ms. Kerner's involvement in this investigation, was it not your conclusion that the arrangements which were made in no compromised the integrity of the investigation?

POTTS: Based on the information that we had at that time, that was our conclusion.

BEN-VENISTE: Now, finally, with respect to the issue that has come up during the course of our proceedings today -- and with the chairman's permission -- I would like to refer to a transcript of Ms. Conaway's deposition which was apparently concluded late last evening.

D'AMATO: Yes.

BEN-VENISTE: On the issue of these White House summaries -- I'm sorry -- the Treasury summaries, and when they were provided to the White House, Ms. Conaway's testimony was that they were delivered on the 27th of July 1995, four days after the actual transcripts were delivered on the 23rd of July pursuant to Secretary Bentsen's and Mr. Cesca's specific authorization.

BEN-VENISTE: So it strikes me that, as of the 27th, this was simply work product -- the summary of transcripts, the full body of which had already been submitted. And Mr. Chairman, again, we've done a lot of work late into the evening as late as last evening with respect to answering some of these questions. And again, it would seem difficult, and perhaps we'll get further answers tomorrow, and I'm sure you'll raise further questions tomorrow.

But at the point where the record seems to rest at the moment, the summaries that we have talked about so much today were not transmitted until the 27th of July, according to the testimony of the person who received them. And that is, as I say, four days after the actual transcripts themselves were delivered. So with that, I have no further questions. I thank you.

D'AMATO: Mr. Giuffra, I will ask you, Ms. Ley, to take a look --

I don't think you've seen it before -- at the White House office transmittal sheet. Familiarize yourself with it. There are, I think, four pages, 727 to Bill Taylor, do you see that? All right? And then there's page one, Steve Katsanos. It's obviously a summary of his testimony, page two. Then it goes over to July 13th, another summary. Then there's a note, "Jane: re the issue of whether we gave transcripts to witnesses, please recall that I have a summary of the Katsanos transcript of Caputo's lawyer, to Caputo's lawyer. Now, let me ask you something.

LEY: That's not me.

D'AMATO: No, I understand that. Let me ask you. Were you aware of the fact that a summary of an RTC official was provided to counsel for a White House employee, Ms. Caputo, assistant to Mrs. Clinton, in which there was relevant testimony on his part as it relates to his interreactions with Ms. Caputo and that this was provided to her lawyer. Does this go well outside of the acceptable norm? Well? Ms. Ley.

LEY: Oh, me. I wasn't aware, certainly, that any of this was provided.

D'AMATO: If you were, would you not have been upset about that? Now, understand. A witness comes in, Mr. Katsanos in this case, and a summary of his testimony is provided, not to him, not to his lawyer, but to the lawyer for an employee of the White House. And there is relevant summary in this summary, as it relates to his actions with a number of people in the White House, including Lisa Caputo. Would not be well beyond the normal practice?

LEY: I think it might raise an issue under the standards of conduct, but you would need a number of facts to -- additional facts.

D'AMATO: Well, wouldn't that be something that would draw your inquiry as to how many of the others -- and wouldn't that be inappropriate? Isn't that inappropriate to share the summary of a witness with someone else's lawyer, who that witness gave testimony about in terms of their conduct, whatever it was? Wouldn't that be inappropriate? Wouldn't that be tipping off the White House, being tipped off as it related to another witness -- an outside witness - what they testified, what the conduct of a White House employee was or wasn't? Is that inappropriate?

LEY: I would have to know more facts about whether the witness himself knew it was going to be done, whether -- what it was used for, who authorized its disclosure.

D'AMATO: It said -- well, you know who authorized it, you see here the White House Counsel's Office. I'm asking you if the White -- if this was brought to your attention and the White House Counsel's

Office undertook the dissemination of this information as it relates here and as it's indicated to Bill Taylor, counsel to Ms. Caputo, isn't that well beyond the scope of what's appropriate? You're an ethics expert. How could you ethically explain how that could take place?

LEY: Well, I have to say I may be a better expert in the standards of conduct than ethics, but on the standards of conduct I would need to know -- I would have to go through the same sort of drill that we did with the information that was the subject of this report.

D'AMATO: Well, you weren't aware if this, were you?

LEY: No.

D'AMATO: When you made this report you were absolutely unaware of it.

LEY: No. But I don't think it would have affected it one way or another.

D'AMATO: It would not? You would not have wanted to know if there were other reports similarly fashioned or furnished to other people?

LEY: Well, the focus ...

D'AMATO: I mean ...

LEY: ... of the analysis that we did was on the conduct ...

D'AMATO: Of the Treasury.

LEY: The Treasury earlier.

D'AMATO: I understand that. You did not actually look at nor did you give any indication about the appropriateness of the conduct of the officials at the White House. Is that correct?

LEY: That's correct.

D'AMATO: OK. You did not give them a clean bill of health so to speak. Is that correct? Because you weren't asked to do that.

LEY: Correct.

D'AMATO: And the only thing you gave them was as it related to that actions that you were apprised of at the Treasury Department on the basis of facts furnished to you by the IGs office. Is that correct?

LEY: Correct.

KRAVITZ: Ms. Ley, let me just go through something, maybe both of you, just to confirm this for the record. Now, at page 735 of our bound volume from the hearing of, in August of 1994, Mr. Cutler says, quote: "The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal issue." Now, is that accurate?

LEY: That's certainly not what I could have said if I were in his position.

KRAVITZ: And Mr. Potts, did you say anything to anyone at the White House that would give the White House a basis for saying that you informally confirmed that no White House official violated any ethical standard with respect to the recusal issue?

POTTS: I'd never made such a finding and I didn't make such a statement.

KRAVITZ: And, so far as you know, none of your employees made such a representation to the White House, that they could say that you had informally conferred -- concurred -- excuse me.

POTTS: No one that I'm aware of did that. Right.

D'AMATO: I've no further questions. Mr. Ben-Veniste? Senator Sarbanes?

SARBANES: Ms. Ley, is it your understanding that all of the depositions were published on July 31st?

LEY: Yes.

SARBANES: When the report was released?

LEY: Yes.

SARBANES: Did you think that was appropriate?

LEY: I -- in a redacted form -- yes.

SARBANES: So that four days later from the date we're talking about here, and I'm sure we'll pursue this other instance further tomorrow, all of the -- all of the -- depositions were made public. I mean, any witness could have had the depositions of every other witness. Isn't that correct?

LEY: On July 31st.

SARBANES: Right.

BEN-VENISTE: And with respect to the summary of the 27th, it is, it is clear, is it not, that all of your interviews had been concluded prior to that time?

LEY: All of the...

BEN-VENISTE: Twenty-seventh of July.

LEY: Right. Well, actually all of the interviews completed by the IG would have been completed, and everything that we were reading was done.

BEN-VENISTE: As of what date?

LEY: Certainly by the 27th. I'm not sure when the Comptroller's was done. It was sometime that week.

BEN-VENISTE: Mr. Ludwig's deposition was taken somewhat afterwards, but it has been the testimony here that as of the 22nd of July, you received essentially a final draft report from the Inspectors General.

LEY: That was the date of their letter. We might have gotten it on the 23rd, but whatever.

BEN-VENISTE: And if some summary of a deposition of a witness was sent to someone representing another witness on the 27th of July, is it conceivable that that act could have somehow affected your report?

LEY: It wouldn't have affected our analysis. No.

BEN-VENISTE: Thank you.

D'AMATO: I want to -- there being no further questions of any of the counsels or senators wish to raise -- I want to thank Mr. Potts and Ms. Ley for taking your time. I know you had to wait around for quite a bit of, you know, quite a while. I want to thank you for your candor and your testimony today. We stand in recess until tomorrow at 10 o'clock. You have the thanks of the committee.

POTTS: Thank you, senator.

EXHIBIT G

DEPARTMENT OF THE TREASURY
WASHINGTON

REPORT TO THE SECRETARY OF THE TREASURY

FROM THE OFFICE OF GOVERNMENT ETHICS

JULY 31, 1994

S 006773

S 006800

February 2 meeting does not appear to involve a violation of the standards of conduct.

2/25 Telephone call from Nolan to Foreman

In the course of a telephone conversation on another matter that occurred in February 25, Mr. Foreman suggested that Ms. Nolan might wish to see Mr. Altman's testimony from the prior day and he explained that Mr. Altman had been given Mr. Kusinski's memorandum on recusal. Neither the suggestion Mr. Foreman made nor the explanation he provided appears to involve a violation of the standards of conduct.

3/1 Telephone call from Podesta to Altman

In the telephone conversation that occurred on March 1, Mr. Altman received an inquiry from Mr. Podesta regarding the fact that, in his testimony on February 24 he had not mentioned the two Fall meetings between Treasury and White House officials. This discussion, which also may involved Ms. Hanson, raises no standards of conduct issues.

Additional contacts

The chronology of contacts provided by Mr. Cutler as part of his testimony before the House Banking, Finance and Urban Affairs Committee on July 26 indicates that, in the days preceding the February 24 hearing, there may have been two additional contacts between Messrs. Steiner and Podesta that are not reflected in the report. One contact may have involved Mr. Steiner advising Mr. Podesta that Mr. Altman was considering announcing in his opening statement at the hearing that he expected to step down as CEO of the RTC on March 30. Any such contact would appear to be similar to that which took place between Mr. Steiner and Ms. Griffin on February 23 and would not seem to involve a violation of the standards of conduct. The other contact may have involved Mr. Podesta speaking to Mr. Steiner to ensure that Mr. Altman was adequately prepared for any questions about the February 2 meeting that might arise during the hearing. Any such contact would appear to be similar to that which occurred between Ms. Hanson and Mr. Eggleston on February 23 and would not appear to involve a violation of the standards of conduct.

I trust this analysis is of use to you in reaching your own conclusions.

Sincerely,

Stephen D. Potts
Director

Ms. Conaway told me that Mr. Dougherty offered to give these summaries to our review team, and that he did so. She also told me that, based on Mr. Dougherty's advice, she sent the summary of Mr. Katsanos's IG deposition to Ms. Caputo's lawyer. We did not give this or any other summary to anyone else.

I would be pleased to respond to any questions you may have. Thank you.

Chairman D'Amato. Thank you very much.

Senator Sarbanes. Mr. Chairman, could I take care of one piece of business before we -- or perhaps you're going to reference it.

Chairman D'Amato. I will reference it and I did give a copy of the letter which we received from Stephen Potts and Jane Ley -- Stephen Potts of the Office of Government Ethics -- sent to the Chairman and the ranking member in which Mr. Potts clarifies his testimony before the Committee.

It says very definitely that our response to the earlier questions remain correct. "OGE did not," and I quote, and he puts quotes, "'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred by any White House official." I made the entire letter available to Mr. Cutler. I've just seen it this morning. Apparently it came in last evening.

Counsel has received it.

And I will get to that because I'm going to go right to that because I found that troubling in our hearing in 1994 because Mr. Cutler continually asserted that the Office of Government Ethics had concluded that there was no ethical violations. And there was some questioning, and we'll point to it in the record in which he said well, this was an informal concurrence.

And I raised that issue repeatedly, and yesterday, the witnesses were quite clear that there was no concurrence. And I'll tell you what is upsetting. Because witness after witness that appeared from the White House used in that mythical concurrence as the wand, that anything they did had been checked upon, and that indeed, the Office of Government Ethics had given them a clean bill of health. I saw that in every newspaper account.

Every witness from the White House, literally every one of them, had the same line. Oh, I've been cleared by the Office of Government Ethics. And so let me go back to this. Mr. Cutler --

Senator Sarbanes. Well now, Mr. Chairman, I think in all fairness, we ought to read the letter, the entire letter into the record.

Chairman D'Amato. The letter will be placed in the record.

Senator Sarbanes. No. Since you've quoted from it and taken the last paragraph, I think we ought to --

Chairman D'Amato. The Senator will have an opportunity on his time to read the entire letter into the record, and if I have time left over, I will do that, but I'm going to pursue my line of questioning, and the Senator on his time can pursue his line.

Senator Sarbanes. Well, all I say, Mr. Chairman, is this is a very blatant example of twisting a letter and I --

Chairman D'Amato. I resent your characterization and you have a right, you have a right thereafter to make any assertion that you deem appropriate, and I think that your contention of a blatant twisting is absolutely inaccurate, and I intend to go through this without interruption and I will give to my colleague that same opportunity. Every member is entitled to that.

Senator Dodd. Mr. Chairman, can I make a suggestion?

Chairman D'Amato. Certainly.

Senator Dodd. Without in any way cutting into your time or Majority's side on this, wouldn't we just take five minutes and maybe do that just to have it on the record without cutting into your time.

Chairman D'Amato. The letter is deemed to be part of the record. The Committee has received this last evening

and it is addressed to myself. And this will not be charged to anyone's time.

To myself and to Senator Sarbanes -- I don't know if other members of the Committee. Has it been distributed?

"Dear Chairman D'Amato and Senator Sarbanes: This afternoon while we were testifying, Mr. Giuffra's last question involved his reading a statement from Mr. Cutler from a 1994 Committee hearing record and asking if we believe Mr. Cutler's statement was correct. We both in essence answered that it was not. Immediately after our testimony, individuals from our office asked if we had heard that the last question was about recusal and not about the more encompassing question we had answered earlier. Neither of us recognized that the question had changed to the more narrow issue of recusal discussions and, therefore, we would like to submit this letter as a clarification to our testimony.

"We have secured a copy of the Committee record from which Mr. Giuffra and was reading and we believe that the passage he read was as follows:

"The Office of Government Ethics has informally confirmed my conclusion that no White House official violated any ethical standards with respect to this recusal issue."

"Jane Ley and ~~Lisa~~ Leslie Wilcox in their discussions with

Jane Sherburne and Sharon Conaway on the afternoon of July 21st did indicate that, based upon their review of the transcripts of all the Treasury and White House officials with whom Mr. Altman had spoken about his recusal concerns, they did not see that any standard of conduct had been violated in those discussions. To the extent that Mr. Cutler meant to reflect that, it is not wrong."

So we're talking about the recusal issue.

"Stephen Potts did not have any discussions with the White House about the recusal issue.

"We are sorry that we did not recognize" -- so they are clarifying the question as to whether there was discussion about recusal and whether or not there was any ethical misconduct, and they said they didn't see any. That was the Chairman's interpretation. The letter speaks for itself.

"We are sorry that we did not recognize that Mr. Giuffra's question had changed from the earlier question," and that was the question that we had all heard, "of whether OGE had informally concurred that no individual ethical standards were violated by White House officials to the more narrow question of recusal. Our response to the earlier question remains correct; OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White

House official.

"We would appreciate it if you would make this letter part of the hearing record."

It is part of the record and I've given this to Mr. Cutler, and I will now get into it.

Senator Dodd. Thank you, Mr. Chairman.

Chairman D'Amato. And I thank the Senator for that. It was not the Senator's intent to in any way obfuscate the facts, but we're going to go right to it because, Mr. Cutler, I am troubled and I am concerned. And I raised this issue back in the summer of 1994 with respect to the Treasury-White House contacts and you repeatedly asserted that the report of the nonpartisan Office of Government Ethics vindicated the conduct of White House officials. And you told us that, repeatedly, that the report cleared the White House of any official wrongdoing.

And as I've indicated to you, witness after witness from the White House used that report and said well, we didn't do anything wrong. OGE said that.

Now, during the 1994 hearings, I pointed out that the OGE report did not -- I didn't see any reference to making any determination that the standards were not violated. And indeed yesterday, very specifically, Mr. Potts said we did not look at this, that was not part of our investigation. Ours was to review the findings of the IG

as it relates to the Treasury and not with respect to conduct by White House officials.

And the report expressly stated at page 2 that "our analysis" -- this is the OGE report -- "is not intended to cover, nor should it in any way reflect upon, the actions of individuals who are employed by the White House." In fact the OGE report stated at page 3, and I'll read that, quote, "many of the contacts detailed in the report are troubling."

Mr. Cutler, I'm troubled. Now, you testified that OGE had, quote, "informally concurred," closed quote, in your conclusions, based on your own internal review, that no violation of any ethical standards occurred by any White House official. And this testimony is found at page 735 of the Committee's hearings. This is your testimony.

I then asked you, what is the informal concurrence by the OGE. And you responded at page 743 of the hearing record -- and if you want that, I will make it available. Would you get that available.

At 743, the hearing record reads as follows --

Mr. Cutler. I have it, Mr. Chairman.

Chairman D'Amato. "We gave" -- this is you -- "the OGE a draft of my factual statement which was attached to my House statement and they went over that, and they went over my actual statement itself and approved the words used

in that statement about informally concurring."

And I have to inform you that your testimony in the summer of 1994 was very clearly contradicted here yesterday by Mr. Potts and Ms. Ley.

Mr. Cutler. I respectfully disagree.

Chairman D'Amato. I'll give you a chance -- let me finish.

And yesterday, this Committee heard from Stephen Potts and Jane Ley. And both Mr. Potts and Ms. Ley testified that the Office of Government Ethics did not, and they reaffirmed it in today's letter, did not informally concur in a conclusion that you made that no violations of any ethical standards occurred by any White House official. Now you may have made that, but OGE has indicated very clearly that they did not.

To further clarify, Mr. Potts and Ms. Ley sent Senator Sarbanes and myself the letter, last evening, in which they repeated, "OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred."

So I simply can't square the testimony that you gave in August 1994 with OGE's testimony of yesterday, and it's clear to me that they did not bless your ethics review or in any way conclude that the White House officials did not violate ethical standards.

And so we come back to the question that I raised last summer. And that is, what was the basis for your statement about OGE informally concurring in your conclusion, recognizing that just about every White House official that came before us, with impunity, say listen, we were cleared of anything. There's nothing wrong. We've got OGE. And I remember Senator Bennett raising that same question, that yeah, they just raised this and said here, don't bother us, your questions -- you're trifling with us because we've been cleared.

So what was the basis of this?

Mr. Cutler. May I respond, Mr. Chairman?

Chairman D'Amato. Yes, I'd appreciate it.

Mr. Cutler. We began, as you know, with Secretary Bentsen having requested the Office of Government Ethics to conduct an inquiry which, because they had no factfinding capability of their own, was eventually done by the Treasury and RTC Inspectors General so that OGE could issue a report as to whether the Treasury employees, as you say, and RTC employees had violated any ethical standard. We ourselves had the question to resolve of whether any White House employees involved in the other side of the coin of the very same contacts had violated any ethical standard.

We met with Mr. Potts and Ms. Ley and Ms. Wilcox, and asked them if they would be able to give us an opinion on a

report based on our findings of fact as to the White House employees. They said because of the press of time they could not do that, they were committed to do the Treasury one and that's all they could do. But they did agree to consult with us about the accuracy of our interpretation of the ethical regulations they themselves had issued on the basis of the facts relating to the White House employees as we had found those facts, I and my investigating team.

And we made oral presentations of the facts to Ms. Ley, and I believe to Mr. Wilcox. They commented on them. We then submitted drafts of my final report to Ms. Ley and she commented on those. We asked if we could say that they concurred in our reading of the ethical regulations they had written based on the facts I had found, I and my team had found, not they had found but I had found, as to the White House employees. They demurred to that but Ms. Ley did agree, as she testified yesterday, we could use a term such as "informally concurred" or "informally agreed." And she testified to that yesterday.

Now, there were three different kinds of issues as to which we wanted their opinion. The first was as to whether it was, on the recusal issue, whether it was appropriate for White House employees to have advised Mr. Altman relating to the recusal issue. And on that, they agreed we could use the term "informally concurred," which is made

clear in the clarification letter of yesterday.

We also asked if we could use -- note that they agreed with our interpretation of the regulations relating to the so-called heads-up issue, the mere passage of information if you did not have any personal, financial or political interest that you were serving. And they agreed with that interpretation, and a sentence to that effect is on page 6 of my original report to the House. If I may read it, I will, and I don't think any objection has been made to this.

"The Office of Government Ethics, the agency charged with interpreting and applying the standards of conduct, agrees that the receipt of such information," that is heads-up information, "by White House officials if not then used to furnish their own" -- "further their own or another's private interest does not violate the standards. On the basis of my review," that is my factual findings, "the information was not used for such a purpose."

Then, and I think this is where the controversy arises, a bit later in my July 26th report, the testimony that I gave to the House committee, I was dealing with the recusal issue, and I said, this one I think they also have agreed in: "The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with

respect to the recusal issue."

Now, I may have gone too far when I testified before this Committee on August the 5th, a week or two later --

Chairman D'Amato. Well, that's the Committee we're talking about.

Mr. Cutler. That is correct. When I said that the Office of Government Ethics has informally concurred that they don't think any White House official has violated these ethical standards, but I would remind you that we never heard any objection from the Office of Government Ethics about that, that it was essentially the same as what was in my July 26 report. Between July 26 and August the 5th, we never heard any objection about that.

And I believe I made clear, even in my August testimony, that it was on the basis of my factual findings, which they did not necessarily accept, on the basis of my factual findings that their interpretation of their own regulations as applied to my factual findings would be the same as mine.

Now I might add, that at some time in September, I went up, at Mr. Potts's request, to make a talk to all the government ethics officers in the executive branch in which I referred to this issue, that is the investigation I had had to make. I thanked the Office of Government Ethics for their assistance. I described what they had done and why

they couldn't give us a formal report.

I sat next to Mr. Potts for an hour or an hour and a half and he never indicated that anything in either my July 26th or August 5th report was objectionable to him.

Chairman D'Amato. The fact that he did not volunteer that does not square with --

Mr. Cutler. Of course not, but the words "informally concurred" were expressly agreed to by Ms. Ley, certainly in some context, and I by --

Chairman D'Amato. In a very --

Mr. Cutler. -- responding to you in give and take in testimony.

Chairman D'Amato. Mr. Cutler, we spent a great deal of time and I'll send you -- and I'm going to ask you to refer to the testimony -- we spent a great deal of time because this was troubling to the Senator at that point in time, and I raised it. And I said nowhere do I see that there is this informal concurrence in the OGE's report.

And you went on to say we gave them a draft of my factual statement which was attached to my House statement and they went over this and went over my factual statement and approved the words used in the statement about informally concurring. And we are now talking about as it relates to access of White House officials.

And then you say to me I've reached the same

conclusion as to the White House officials and based on the facts as I reported them to the nonpartisan Office of Government Ethics, that office has informally concurred.

And quite clearly, that is not what Mr. Potts or Ms. Ley indicated and they say to us quite clearly that outside of the issue of recusal, that narrow issue which they did -- they did make a finding, our response to the earlier question remains correct. OGE did not -- you've got this letter?

Mr. Cutler. We may have a difference in --

Chairman D'Amato. No, this is just the one of November 8th.

Mr. Cutler. Yes, we have it.

Chairman D'Amato. Would you look page 2?

Mr. Cutler. I think we have a different numbering system but I'm reading the same thing.

Chairman D'Amato. It says Office of Government Ethics. We just -- I asked someone to make it available to you. Do you have it there?

Mr. Cutler. I have it.

Chairman D'Amato. Okay. Would you look at the second page?

Mr. Cutler. Yes. I think it's worthwhile starting from the top of that page. Would you read it?

Mr. Cutler. "We are sorry that we did not recognize

that Mr. Giuffra's question had changed from the earlier question of whether OGE had informally concurred that no individual ethical standards were violated by White House officials to the more narrow question of recusal."

Chairman D'Amato. Right. So that covers the point that you raised. Now, would you continue?

Mr. Cutler. "Our response to the earlier question remains correct; OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official.

Chairman D'Amato. And we would appreciate it if --

Mr. Cutler. We would appreciate it if you would make this letter a part of the record.

Chairman D'Amato. And who is it signed by?

Mr. Cutler. It is signed by Mr. Potts and Ms. Ley.

Chairman D'Amato. Counsel.

Mr. Chertoff. Mr. Cutler --

Mr. Cutler. I need to make one further response. You say that all they had -- the only subjects on which they had cleared us to say that they informally concurred was the issue of recusal.

Chairman D'Amato. No, I'm saying --

Mr. Cutler. I believe they had cleared us on another subject which was the heads-up, the passage of information --

Chairman D'Amato. They testified to that yesterday.

Mr. Cutler. -- and they did clear us on that as well.

Chairman D'Amato. But Mr. Cutler --

Mr. Cutler. And here --

Chairman D'Amato. -- I suggest to you that, when you come as the White House counsel and you say that informally that we have been -- we being the White House -- White House officials have the blessing of the Office of Government Ethics as it relates to no violations of any ethical standards occurred, and thereafter every -- just about every White House official comes in and waves it, that was just not accurate.

Mr. Cutler. I --

Chairman D'Amato. You are telling me --

Mr. Cutler. May I finish my response, Senator.

Chairman D'Amato. Certainly.

Mr. Cutler. What I said in my testimony before you on August the 5th was that the OGE had reviewed the factual findings of the Treasury Inspector General and issued its formal opinion concurring that no violation of any ethical standard -- these are the so-called standards of ethical conduct for the executive branch -- occurred by any current Treasury or RTC official.

Then I said, I have reached the same conclusion as to the White House officials, and based on the facts as I

reported them to this nonpartisan Office of Government Ethics, that office has informally concurred.

Now that may be where I may have transgressed.

Chairman D'Amato. If you go down two sentences later, because this comes up, same page, you say --

Mr. Cutler. "The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal." That they accept. They agree with that.

Mr. Chertoff. But Mr. Cutler, you agree that the statement you made, "I have reached the same conclusion and reported it to the Office of Government Ethics and that office has informally concurred," you agree that that was incorrect?

Mr. Cutler. I don't agree that that was incorrect. I said that's where I may have transgressed because --

Mr. Chertoff. They didn't say it.

Mr. Cutler. What you are looking at are two sides of a coin; with respect to each contact, there is a White House official and there is a Treasury official. With respect to each contact, there is the same standard, the regulation written by the Office of Government Ethics. They interpreted it to say that the Treasury official involved in that contact had not violated the standard.

Mr. Chertoff. The reason they did that --

Mr. Cutler. And it was fair I think for me to conclude based on my facts that the same principle would apply as to the White House official engaged in the same contacts. It was the heads and the tails of the same issue.

Mr. Chertoff. Isn't it a fact, Mr. Cutler, that the difference between the two is that whether or not information was properly used depends upon the intent of the person who is handling it. And therefore when the Office of Government Ethics passed on the issue of the Treasury officials and whether they had violated the standards, they explicitly did it based upon their understanding of the intent of the officials.

They were not allowed -- we had this yesterday. They were specifically prohibited by your office from getting into the question of whether White House people, once they received the information, made some misuse of the information. That was specifically put beyond the scope of their inquiry. That was supposed to be your inquiry.

Mr. Cutler. That was my inquiry, and I say that based on my facts.

Mr. Chertoff. So as --

Mr. Cutler. My findings.

Mr. Chertoff. -- as to the issue of the intent of the White House actors in this, the Office of Government Ethics

didn't have a clue about their intent. And Mr. Potts has come up here and said here that the statement you made here about an informal concurrence as to the White House was simply incorrect.

And I must ask you this, Mr. Cutler. When you said, you made this statement where you may have transgressed in the give and take, didn't the statement we're talking about here get made in the context of your prepared testimony?

Mr. Cutler. It appeared in my prepared testimony for August the 5th, that is correct.

Mr. Chertoff. And did you not know from your preparation and your discussions with the witnesses that Mr. Stephanopoulos and Mr. Ickes and Mr. Podesta and everybody else was going to come up here and hold up the Office of Government Ethics and say, in effect, to the Committee you have nothing to look at, we've been cleared by the Office of Government Ethics. You knew that coming into this hearing last year; correct?

Mr. Cutler. I don't understand the point of that question. I'm responsible for what I said. I can't be responsible for an enlargement of what I said ~~with~~ by anyone else. I confessed to an ambiguity for something they could misread in what I said, but I find it very strange that between August the 5th of 1994 and November whatever it is in 1995, no one from the Office of Government Ethics had

ever raised that issue with me --

Chairman D'Amato. Well, you know something?

Mr. Cutler. -- or frequently.

Chairman D'Amato. I don't find it strange. I found it refreshing that at least somebody when asked, and was in a very embarrassing position, given that the White House and White House counsel makes these findings and they had worked with you rather closely, he's not going to volunteer that that is not the case. I don't think so. I don't find it strange at all.

But when you put the question to him directly, did you have an informal agreement that you found no violation of ethical standards by White House officials, he clearly said that was not the case. We didn't have -- and I have to tell you when Mr. Ickes and others come before this Committee you have to know that they were going to rely on the findings of the counsel who said that indeed not only did he find nothing inappropriate, but the Office of Government Ethics found no violations of ethical standards by any White House official.

And the fact they did not and the fact is you'll find in all of the press releases and all of the reports that what you did is like getting the Good Housekeeping seal of approval and it was pirated. It really didn't get that.

Mr. Cutler. Did anyone ask yesterday whether to this

day they find any violation of those ethical standards?

Chairman D'Amato. Is there any investigation taking place with respect to the Office of Government Ethics that is being conducted? Were they permitted to conduct an investigation, did that take place? I think that's a rather disingenuous question.

Mr. Cutler. They were fully familiar with my findings.

Chairman D'Amato. And they --

Mr. Cutler. Their own report notes my findings and finds at the very end that the Treasury and RTC Inspectors General had overlooked two contacts which were reported in my report, and they pass on those. And they say with respect to those also, there was no violation of ethical standards.

Mr. Chertoff. Let me ask you this, Ms. Sherburne, is it not correct that the Treasury Inspector General personnel who wanted to do interviews or depositions of White House people were told that they were expressly not to go into the question of what any White House person who received information did with that information within the White House? Wasn't that put off limits?

Ms. Sherburne. We had an understanding that the RTC and Treasury Inspectors General were reviewing the conduct of Treasury officials for Secretary Bentsen's benefit, and

that the President, and through the chief of staff, Mack McLarty, had asked Mr. Cutler to review White House conduct.

So implicit in that understanding and made explicit at some point was that they would be -- the IGs would be inquiring about RTC and Treasury conduct, not about what the White House did once it received the information from White House and Treasury -- from Treasury and RTC officials.

Chairman D'Amato. I want to ask one more question before counsel continues. Mr. Cutler, you saw the letter from Mr. Potts and Jane Ley. I'm going to read it again.

"Our response" -- the last sentence -- "our response to the earlier question remains correct; OGE did not 'informally concur' in Mr. Cutler's conclusion that no violation of any ethical standards occurred by any White House official."

Are they correct or incorrect? Are you saying that they're wrong? You disagree with them?

Mr. Cutler. Well, I say that my statement before you, I have reached the same conclusions as to the White House officials and based on the facts as I reported them to this nonpartisan Office of Government Ethics, that office has informally concurred.

The question before us was does a given state of facts

violate an ethical regulation. If it didn't violate that ethical regulation as to the Treasury employee involved, then on the basis of my state of facts which included findings that there was no improper motive, et cetera, that you referred to Mr. Chertoff, it could not have violated those regulations --

Chairman D'Amato. They did not make this finding, did they, you did? You made this conclusion?

Mr. Cutler. And I made that very clear in my statement, based on my findings of fact.

Chairman D'Amato. No, you said the Office of Government Ethics and the office has informally concurred.

Mr. Cutler. Based on the facts as I reported them to the OGE.

Chairman D'Amato. Not with respect to conduct of White House officials, they did not. Mr. Cutler, I'm asking you, did they concur with respect to the conduct of White House officials? Did they say there were no ethical violations? Did they say that?

Mr. Cutler. What this means to say is --

Chairman D'Amato. What this means to say is the report that you made but not that the Office of Government Ethics concurred. That's your statement. That's your statement.

Mr. Cutler. The statement is --

Senator Sarbanes. Mr. Cutler, let Mr. D'Amato do all his explosions and you'll get a chance then to respond in a calm and rational way. And I think maybe, I think we'll probably advance the hearing better that way.

Chairman D'Amato. I would hope that the ranking member would permit the Chairman the ability to attempt to get the facts as they are and not in a distorted manner, and that's what I'm attempting to do.

And I have not referred to my colleague in any way other than in attempting to be respectful, and I don't think that when we engage in the kind of thing -- now this is the second time today and I know that these hearings can get a little testy and drag out, but I don't think it helps us.

You have an opportunity, you will have that to make your points. Let's do it and let's not engage in personalities.

Senator Sarbanes. Well, Mr. Chairman, I just don't think you ought to be up here and shouting at the witness.

Chairman D'Amato. And I don't think you should be characterizing my actions and I think you're mischaracterizing.

Senator Sarbanes. Your actions speak for themselves. They're on the record.

Chairman D'Amato. Let that take place.

Senator Sarbanes. I was making a suggestion to Mr. Cutler as to how to deal with this matter which is to let you go ahead and finish and then give his response.

Chairman D'Amato. Mr. Cutler doesn't need your coaching; I can assure you.

Senator Sarbanes. That's for sure. I agree with that.

Mr. Cutler. I'm going to take his advice.

Chairman D'Amato. The fact of the matter is, Mr. Cutler, that the Office of Government Ethics and Mr. Potts has clearly indicated that they did not give you any formal or informal conclusion, one, that you made to this Committee that there were no violations of ethical standards by any of the White House officials. You waived that report. You made that report and all of the witnesses relied upon that and used that as the cover to excuse them from any questions that were raised. And that's troubling and that's the problem.

Mr. Cutler. Well, Mr. Chairman, what the Office of Government Ethics does is to give an opinion as to the meaning of its regulations, its ethical regulations on the basis of a statement of facts received from someone. I think I made very clear in this statement that's under attack that the statement of facts was supplied by me. It was my statement of facts about the White House people,

including their motives, which Mr. Chertoff referred to.

The regulations are the regulations. Based on a statement of facts an opinion is given. They had no time to give us a formal opinion as to the meaning of their regulations, but they allowed us to say, or at least so I believed, that they informally concurred in our reading of their regulations as applied to our version of the facts.

They were not taking responsibility for our version of the facts, but based on our version of the facts, we understood them to mean that that would not involve a violation of the regulations. We had extended discussions with them about the meaning of the regulations as applied to our particular findings of fact, which perhaps Ms. Sherburne could expand on.

Mr. Chertoff. Ms. Sherburne, I'd like to ask you a question. When did you first get transcripts of the Treasury witnesses who testified before the Treasury or RTC Inspector Generals?

Ms. Sherburne. I believe we first got the transcripts on June -- I'm sorry, July 23rd. And that's based on a transmittal letter from Steve McHale to me.

Mr. Chertoff. Are you positive you didn't get transcripts of Treasury witnesses before July 23rd?

Ms. Sherburne. Treasury witnesses?

Mr. Chertoff. Yes, Treasury witnesses.

Senator Bennett. Thank you, Mr. Chairman. I don't have a lot of questions. I don't have a desire to wander through the hall of mirrors but I've sat here as a layman listening to the attorneys joust and I jotted down two questions to which I would like the answers. And they're very simple and I hope straightforward.

You said, Mr. Cutler, on one occasion, and I wrote it down, "I may have transgressed" with respect to your testimony. "May" is an interesting word. You as a lawyer probably don't like it when it comes to an evidentiary hearing. Could you tell us whether you did or you didn't and in what area?

Mr. Cutler. I don't think I did, but obviously some of the OGE people appear to think I did. What I meant to say in that statement is that they agreed informally, where they had authorized, perhaps in a different context, but they agreed informally with the interpretation of their regulations based on a state of facts which I had found and which I felt responsible for.

It was not their state of facts. I did not mean to say that they concurred in my findings of facts, but only that based on my findings of fact, as we had set them forth both in oral form and in drafts of the final report which were given to OGE, that based on my findings of fact they agreed with the interpretation of their own regulations

that we had applied after extended discussions with them about the meaning of the regulations.

Senator Bennett. Okay. So if I can say it back to you so that you can correct me so I won't mischaracterize you. What I hear you saying is you still believe you did not transgress in this area, but you've now heard their interpretation and it is reasonable enough that you're willing to say they may be right and you may be wrong?

Mr. Cutler. Well, I would rewrite what I said to make clear what I meant. I used to work for a man -- it was Elihu Root, Jr. -- who drafted the AT&T pension plan, and they had to pay a very large judgment to a widow in a situation that they had never intended to be covered. And as a result, he put a motto on his desk which said "the words you use must not only be consistent with what you mean, they must be inconsistent with any other meaning."

Now that's a standard to which we could all repair, and I confess I did not achieve it in what I said in my draft.

Senator Bennett. All right. Well, then we come back to the question that the Chairman asked before I was called away, and I was hoping to hear a clear answer and it follows on in this dialogue.

The Chairman came back to the sentence in the letter from Mr. Potts and Ms. Ley, "OGE did not informally concur

in Mr. Cutler's conclusion that no violation of any ethical standard occurred by any White House official."

And the Chairman asked you is that statement correct or not correct, and I didn't hear a yes or no out of you. Are you prepared to say yes or no?

Mr. Cutler. My answer would be the same. I believe they did concur in our interpretation of their regulations as applied to a set of facts which I had found for which they did not accept responsibility. But on that set of facts, I believe they did informally concur with my application of their regulations to those facts.

Senator Bennett. Well, back to the comment by Mr. Root, is your answer inconsistent with their statement?

Mr. Cutler. Apparently, my answer in the testimony is inconsistent with what they thought. I think their statement contains as many ambiguities as mine. I believe they do agree with my interpretation of their regulations.

Senator Bennett. So to the question is their statement correct or not, I believe I hear you say, in your opinion, their statement is not correct?

Mr. Cutler. You are right.

Senator Bennett. Thank you. Thank you, Mr. Chairman. I just wanted that clarification.

Chairman D'Amato. Thank you, Senator.

Mr. Chertoff.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, NOVEMBER 28, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. I would ask the first panel to please stand for the purpose of taking the oath.

[Whereupon, Wayne Foren, Erskine Bowles and Charles E. Shepperson were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. At this time the Committee would receive any opening statements that you might want to submit or make. Mr. Foren, do you have a statement?

SWORN TESTIMONY OF WAYNE S. FOREN, FORMER SPECIAL ASSISTANT TO DEPUTY ADMINISTRATOR, SBA

Mr. FOREN. Yes, I do. Mr. Chairman and Members of the Committee, good morning. With your permission, I would like to summarize my statement and submit it for the record.

The CHAIRMAN. Certainly. It will be received in the record as if read in its entirety and we'll proceed to your summary.

Mr. FOREN. Thank you. I am responding to your request to appear before the Committee to discuss Capital Management Services, Inc., and the SBA's oversight and regulation of the company.

Capital Management was licensed by the SBA on March 14, 1979 as a SSBIC with $500,000 in private capital. Under this program the SBA licenses privately owned and managed investment companies that limit their activities to providing risk capital to independently owned and managed small business concerns. The concerns must use these funds for their sound financing and for their growth, modernization, or expansion.

Within the framework of program regulations, SBIC managers make lending and investment decisions. The SBA does not approve each financing; rather, it monitors the SBIC's operations.

As a SSBIC, Capital Management was to limit its assistance to businesses owned by persons who are socially or economically disadvantaged. The SBA provides financial assistance, which it calls leverage, to SBIC's in multiples of their private capital enabling them to provide greater assistance to eligible small business concerns. For example, an SBIC with $15 million in private capital is eligible for $45 million in leverage. If a SBIC suffers a loss, they lose their private capital first.

During the 1980's, Capital Management increased its private capital to $1.4 million and the SBA provided $3.4 million in financial assistance to the licensee.

In 1993, it became apparent that Capital Management was attempting to defraud the SBA with its 1992 $13.8 million noncash capital increase and related request for $6 million of leverage; and that its 1988 capital increase and related leverage was, in fact, fraudulent.

It should be noted that when I referred Capital Management to the Office of the Inspector General for investigation in May 1993, we were not aware of the 1986 and 1988 fraudulent transactions. We were not aware of the interrelated transactions between Madison Guaranty Savings & Loan and Capital Management, nor were we aware of the allegations made by David Hale regarding President Clinton's involvement with the Master Marketing loan.

I served as the Associate Administrator for Investment during the period July 28, 1991 to October 22, 1993. In that position, I was the SBA Management Board Official who headed the organizational unit responsible for administering the SBIC program. In February 1995, I retired from Federal service and I am no longer associated with the SBA or the SBIC program.

Much has been accomplished over the last 5 years to strengthen and improve program administration including licensing, oversight, examination, and liquidation of SBIC's. It is noted that Capital Management would not qualify as a Small Business Investment Company at the present time under the revised licensing standards established while I headed the program.

I believe this is one of the most blatant cases of fraud the SBIC program has experienced. Although some SBIC's do have problems and will continue to, I do not believe Capital Management is representative of participants in the program.

Mr. Chairman, this concludes my remarks and I'll be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Mr. Foren.

Mr. Bowles, do you have a statement that you would like to give?

Mr. BOWLES. Yes, I do.

The CHAIRMAN. I would be happy to receive it.

SWORN TESTIMONY OF ERSKINE B. BOWLES
DEPUTY CHIEF OF STAFF TO THE PRESIDENT
FORMER ADMINISTRATOR, SBA

Mr. BOWLES. Thank you, sir.

Mr. Chairman and Members of the Committee, good morning. Many of you I know. Some, however, I do not. Therefore, I'd like to take a second and just tell you a little bit about myself.

Prior to accepting the position as Administrator of the SBA, I spent my entire professional career as a businessman.

In 1975, I started a company called Bowles Hollowell Conner to focus on providing financial services to small- and medium-sized companies. The team we built at this company grew from one full-time employee into one of the premier investment banking firms in this country serving the middle market.

In early 1993, President Clinton asked me to leave the private sector and take on the leadership role at the SBA. When I looked at the SBA, I saw an organization with very low morale but tremendous opportunity. I saw an organization that with some leadership could do so very much to help small business, the engine that drives the economic train in this great country of ours.

I worked quite hard to get ready for my confirmation by the U.S. Senate so, once confirmed, I could hit the ground running. Upon my confirmation by the Senate on May 7, 1993, I set out to build a team that could accomplish four goals: to increase the availability of capital to small businesses; to lessen the regulatory burden on small businesses; to make the SBA itself a more efficient, more effective organization; and to give small business a voice at the economic table in the Clinton Administration.

In my 17 months at the SBA, I felt we made great strides in accomplishing each of these goals.

In September 1994, the President asked me to take on a new responsibility as Deputy Chief of Staff for Operations at the White House. My job at the White House has revolved around organization, structure and focus, just like my business career did. I believe over the last year we have made good progress in that effort.

Six months ago, I publicly announced that, toward the end of this year, I was going to return to the private sector and to my family in North Carolina. I plan to leave public service as soon as the budget for 1996 is finished, which I hope is very soon.

The CHAIRMAN. You may be around for a long time.

Mr. BOWLES. Turning briefly to the subject of Capital Management Services, my primary role, until recusing myself in November 1993, was to ascertain that the SBA was cooperating fully and in a timely manner with the investigation into and the prosecution of this SSBIC and its owner/manager.

My first recollection of being briefed on Capital Management is sometime in mid-May 1993. At the mid-May briefing, which I recall concerned a number of troubled SSBIC's, I believe I was told that Capital Management was a troubled SSBIC located in Arkansas, that was owned and operated by a local judge who had defrauded the SBA. I believe I was also told that the matter of Capital Management had been referred to the proper legal authorities. I do not remember if it was the Inspector General's Office of the SBA or the Justice Department, but I do recall believing, based on what I was told, that the matter was being handled appropriately.

My next recollection of Capital Management is not until the week of September 20, 1993, when the SBA's ethics officer asked if he could visit with me in my office for a few minutes. At this meeting, he told me that we were getting ready to indict Judge Hale, the owner of a troubled SSBIC down in Arkansas, for defrauding the SBA and I might want to give the White House a

heads-up on it. I asked what is a heads-up. It was not a term I had heard used in the business world. He told me it was simply notification in case they got some inquiries. I asked him if this was OK to do, and he said it was. I said I would take care of it.

To the best of my knowledge, I did not notify anyone at the White House. In fact, I do not believe I have ever discussed Capital Management with anyone at the White House during my tenure at the SBA.

My next memory of Capital Management is in November 1993, when the SBA's General Counsel told me that he had previously sent some documents to the White House on Capital Management. Having recently seen in the newspapers Judge Hale's allegations of a purported connection between Capital Management and the President, I asked him if he had checked with anyone before doing this. He said no, and I told him to call the Justice Department and see if it was OK. It is my recollection that the documents were returned a short time later.

On or about the time of this discussion with our General Counsel, I decided I should recuse myself from any decisionmaking role on the Capital Management matter. I was aware of no actual conflict of interest that required recusal, but I did not want there to be even a perception of impropriety. This was a personal judgment on my part.

Thereafter, while continuing to perform duties such as signing transmittal letters, sending materials to Members of Congress, I did not participate in, nor was I involved in, nor did I make any decisions concerning the SBA's handling of the Capital Management matter while I remained at the SBA.

I believe I informed the General Counsel and others of my decision to withdraw from this matter. I also told them to perform their responsibilities in the same vigorous manner, as I subsequently put in writing to our ethics officer on March 3, 1994, after Congressman LaFalce inquired if my recusal was in writing, and I quote: "Undertake the Capital Management investigation in the same vigorous manner you would any other investigation of a SSBIC. If you find any evidence of fraud or abuse, you should take every step to prosecute the person or persons who have perpetrated this malfeasance."

This completes my statement. I am prepared to respond to any questions the Committee may have.

The CHAIRMAN. Thank you, Mr. Bowles.

Mr. Shepperson.

SWORN TESTIMONY OF CHARLES E. SHEPPERSON
DEPUTY ASSOCIATE ADMINISTRATOR, SBA, SBIC LITIGATION

Mr. SHEPPERSON. I have a brief statement, sir. Good morning, Mr. Chairman, Members of the Committee. I'm responding to your request to appear before the Committee to discuss Capital Management Services, Incorporated, [Capital Management] and its supervision and regulation by the Small Business Administration.

I served as the Deputy Associate Administrator for Investment during the period January 26, 1992 to November 3, 1993. In that position, I assisted the Associate Administrator, Mr. Foren, in administering the Small Business Investment Company program. My

responsibilities included, but were not limited to, participation and decisions concerning licensing, funding, accelerated indebtedness, and oversight of the SBIC examination function.

I'm currently employed by the Small Business Administration as the Deputy Associate Administrator for Small Business Development Centers. I've not been associated with the SBIC program for over 2 years. However, I would be happy to answer any questions regarding the SBIC program during my tenure as the Deputy Associate Administrator for Investment.

That concludes my statement. Thank you.

The CHAIRMAN. Thank you very much, Mr. Shepperson.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Foren, you said in your opening statement that at the time that the SBA was providing funds to Capital Management Services, you were not aware of the loan that was made to Master Marketing. Would you, just to set a context for this, explain to everybody what you now understand was the difficulty with the loan that David Hale's Capital Management Services extended to Master Marketing?

Mr. FOREN. As I understand that transaction, it was a loan to Susan McDougal of $300,000 to be used for purposes within a company called Master Marketing.

Mr. CHERTOFF. Now, do you understand that Susan McDougal was then the wife of James McDougal who was, at various times, the individual who was running Madison Guaranty?

Mr. FOREN. That is correct.

Mr. CHERTOFF. You also understand now that Jim McDougal and Susan McDougal were partners in a business venture with the Clintons known as Whitewater Development?

Mr. FOREN. That is correct.

Mr. CHERTOFF. Was it your understanding that, under any interpretation of the purposes of a Small Business Administration-funded company like Capital Management, it was supposed to be in the business of lending money to Susan McDougal for purposes of using the money to fund ventures like Master Marketing?

Mr. FOREN. Master Marketing, I don't recall the specific purpose of the company, but it certainly was not portrayed, as I understand the file, as a company involved in real estate development as such. I believe it was marketing real estate properties and that sort of thing, and the SBIC program requires that the money be used for the sound financing and the growth, modernization, or expansion of the particular small business concern receiving the assistance.

Mr. CHERTOFF. In other words, the money is not designed to be used to speculate in——

Mr. FOREN. That's true.

Mr. CHERTOFF. —or to repay loans or to engage in other kinds of speculative activities?

Mr. FOREN. Right. Speculative real estate development is a prohibition for the program.

Mr. CHERTOFF. Isn't it also correct that one of the purposes of providing funds to these investment companies is to provide money to areas or individuals who are socially or economically disadvantaged?

Mr. FOREN. That's right. A Specialized Small Business Investment Company is to limit its activities to businesses owned by persons who are socially or economically disadvantaged.

Mr. CHERTOFF. Is it your understanding that Jim and Susan McDougal were socially or economically disadvantaged?

Mr. FOREN. It does not appear that they were.

Mr. CHERTOFF. Now, let me take you to 1993 and direct your attention to February, during which time you had a meeting or a conversation with David Hale. Do you remember that conversation?

Mr. FOREN. Yes, I do.

Mr. CHERTOFF. Tell us briefly what that conversation was about.

Mr. FOREN. David Hale asked for the meeting, which I granted in my office, and it had to do with the findings of the current examination. I had directed that his company have a current regulatory examination. The examiners had what we normally call an exit interview with Mr. Hale to discuss the findings. That occurred on January 15. After that event, David requested the meeting to discuss reversing the two transactions that were in question; one had to do with the noncash capital increase of $13.8 million, and the other had to do with exchanging the investment of seven portfolio securities for, supposedly, stock of a publicly traded company. So he wanted to just undo those transactions.

Mr. CHERTOFF. So, in other words, transactions that he had previously obtained permission to do, he wanted to unwind?

Mr. FOREN. He didn't obtain permission. Under the rules of the program, a SBIC requires the SBA's prior approval or postapproval for specific transactions. This was the kind of transaction that required the SBA's approval. We had not given it, although he had consummated the transaction.

Mr. CHERTOFF. What he wanted to do was then step away from the transactions?

Mr. FOREN. He wanted to back away from the transactions.

Mr. CHERTOFF. In the course of the discussion, did you have a conversation with Mr. Hale on what he described, in essence, as "the way we do business in Arkansas"?

Mr. FOREN. Yes. That discussion arose from my question to him as to why people would give him tens of millions of dollars. The noncash assets were contributed to the company as a donation, no stock was issued for it, and he wanted us to provide financial assistance based on the noncash assets. My concern to him, my point to him was we do not leverage noncash assets, and oh, by the way, why would somebody give you tens of millions of dollars.

Mr. CHERTOFF. That's a fair question. What was his answer?

Mr. FOREN. His answer was people would give him the money because he could do things for them in Arkansas.

Mr. CHERTOFF. Did he elaborate on the way in which he could do things for them in Arkansas?

Mr. FOREN. Yes, he did. He used the illustration of an insurance company. He said that there were people that wanted to, and I forget, it was either start an insurance company in Arkansas or move an insurance company to Arkansas, and that they needed help getting the thing organized and getting through the regulatory structure of the State. He said he could help them solve their problems and that's why they would give him the money.

Mr. CHERTOFF. Did he explain how he could help them solve the problems?

Mr. FOREN. No, he didn't. He just said he could help them solve any problems they had.

Mr. CHERTOFF. In the course of this discussion or other discussions around this time, did Mr. Hale mention any particular individuals in Arkansas that he had relationships with?

Mr. FOREN. Yes, he mentioned the current Governor.

Mr. CHERTOFF. That was Jim Guy Tucker?

Mr. FOREN. Jim Guy Tucker.

Mr. CHERTOFF. What did he say about him?

Mr. FOREN. He said the people that he had influence with were Jim Guy Tucker and the President of the United States.

Mr. CHERTOFF. That would be Bill Clinton?

Mr. FOREN. That's right.

Mr. CHERTOFF. Did he explain what the source of that influence with Mr. Tucker and Mr. Clinton was?

Mr. FOREN. He did not explain.

Mr. CHERTOFF. From your own experience in dealing with Mr. Hale on earlier occasions, had you formed an impression about whether he had influence in Arkansas?

Mr. FOREN. I really didn't deal directly with Mr. Hale. His company was regulated by our agency under my supervision. I certainly had dealt with issues involving his company, and I believed that without question he probably did have access, not necessarily influence, I can't discern influence, but I felt he probably did have access to the Governor's Office.

Mr. CHERTOFF. What was the basis of that feeling?

Mr. FOREN. There was a loan in the portfolio to Jim Guy Tucker, and I knew that at the time. So I presumed that if he made a loan to the guy, he probably had access to him.

Mr. CHERTOFF. Now, did there come a time after this meeting in February that Mr. Hale actually suggested that you have a meeting with Governor Tucker?

Mr. FOREN. Yes. Actually the discussion started before that, but in May, after I made the referral to the Inspector General, he had conversations with a member of my staff, trying to set up a meeting in Arkansas with myself, people at the Arkansas Development Finance Corporation, and with the Governor.

Mr. CHERTOFF. When you say "Arkansas Development Finance Corporation," you mean the Arkansas Development Finance Authority, ADFA?

Mr. FOREN. Yes, ADFA.

Mr. CHERTOFF. You received an invitation from Mr. Hale indirectly to actually attend a meeting with the Governor of Arkansas?

Mr. FOREN. What they were trying to do was set up a meeting and the context of such a meeting was to explore the idea of creating a one-stop capital shop for small business, the SBIC being a component, the ADFA possibly being a component as a 7(a) lender which, under certain circumstances, may well have qualified, and possibly a certified development company being a component.

Mr. CHERTOFF. Now, what was your response to this suggestion on the part of Mr. Hale that you meet with Governor Tucker and people from the ADFA?

Mr. FOREN. My response was that it was not appropriate at this time, having made a referral of his company to the Inspector General.

Mr. CHERTOFF. Keeping your attention focused in May 1993, did there come a point when you had interaction with Mr. Bowles, who is now sitting to your left, as he was preparing to be confirmed as Administrator of the SBA?

Mr. FOREN. Yes.

Mr. CHERTOFF. Did you have some contact with him about Mr. Hale in that month?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. Tell us about that.

Mr. FOREN. By the beginning of May, I had concluded that we were not going to get the information that we sought through the examination relative to the noncash assets that were contributed. I wanted to know the source, I wanted to know whether they were encumbered or restricted in any way, and other information relative to those transactions, highly unusual transactions.

I also knew that Erskine's confirmation hearing was coming up. By the way, I knew that the only way we probably would get the information was by making a referral to the Office of the Inspector General so that they could proceed on an investigation in an attempt to obtain the information.

Knowing that Erskine's confirmation hearing was imminent, I felt it was appropriate that he be briefed on this issue.

Mr. CHERTOFF. Did you do that?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. Tell us what you did.

Mr. FOREN. OK. As I recall, Erskine did not operate from the SBA's facilities at the time. I briefed him twice before that, but it was not at the SBA's facilities and not having to do with Capital Management. It had to do with the SBIC program.

I got in touch with the agency liaison with him at that time and explained what I was concerned about and the importance of his being aware of this issue, being a sensitive case. This would have been about May 3, May 4, May 5, sometime along that period.

As I recall, I had a telephone discussion with Erskine one of those days concerning the issue. He agreed that the transfer should occur prior to the confirmation and that he wanted a briefing paper, which I did, I prepared a briefing paper, and we did the transfer on the 5th.

Mr. CHERTOFF. You say you prepared a briefing paper. Do you have a copy of that before you?

Mr. FOREN. Yes, I do.

Mr. CHERTOFF. We've given copies, I think, to all the panelists. I'm going to ask that it be put on the Elmo, just for purposes of having you identify it. I'm sorry. That's August 9. We're back earlier in May. It's going up right now. If you can move it down a little bit. It's an undated memo, although I think on the third page you'll see it actually has some handwritten dates of——

Senator DODD. Mr. Chairman, will we get a copy of this ourselves?

Mr. CHERTOFF. I believe everybody has a copy of this.

The CHAIRMAN. I think Counsel has them. Can we make them available before we proceed?

Mr. CHERTOFF. Mr. Foren, do you recognize this to be the briefing paper that you prepared in connection with this briefing?

Mr. FOREN. Yes, it is——

Mr. CHERTOFF. You have to speak into the microphone.

Mr. FOREN. Yes, it is the paper.

Mr. CHERTOFF. What did you do with the briefing paper?

Mr. FOREN. I'm sorry?

Mr. CHERTOFF. What did you do with this briefing paper that was prepared in the first week of May 1993?

Mr. FOREN. As I recall, I provided it to the agency liaison, Kris Swedin, who was then, and is now, as I understand it, the Assistant Administrator for Congressional Relations.

Mr. CHERTOFF. Now, you had a conversation with Mr. Bowles yourself in this time period in which you advised him you were going to refer the Hale matter over to the Inspector General; correct?

Mr. FOREN. That is my recollection, yes.

Mr. CHERTOFF. Within the next day or so, did you have a further conversation with Mr. Bowles about this?

Mr. FOREN. As I recall, after the confirmation hearing Erskine advised me or notified me in an informal conversation that he had briefed the then-Chief of Staff, Mack McLarty, on Capital Management and that his guidance was to proceed with this case as you would any other case.

Mr. CHERTOFF. Now, what was the context in which Mr. Bowles said this to you?

Mr. FOREN. As I recall, it was as we were standing around waiting for a meeting to begin, others were in the room, and it was a private conversation, just oh, by the way, I had a discussion, I briefed him and he said to proceed.

Mr. CHERTOFF. Did you tell anybody else about this conversation you had with Mr. Bowles?

Mr. FOREN. I told my Deputy, I told my wife——

Mr. CHERTOFF. We won't talk about your wife, but——

Mr. FOREN. —and I don't recall who else.

Mr. CHERTOFF. Mr. Shepperson was your Deputy?

Mr. FOREN. That is correct.

Mr. CHERTOFF. Mr. Shepperson, do you recall Mr. Foren mentioning this conversation or this series of conversations that he had with Mr. Bowles?

Mr. SHEPPERSON. Yes, I do.

Mr. CHERTOFF. Would you tell us what you recall about it?

Mr. SHEPPERSON. My recollection is that Wayne had come back from a meeting with Mr. Bowles on a subject I can't remember, he had come back and said that Erskine had taken him aside and indicated that he had spoken to Mr. McLarty, and that Mr. McLarty had indicated that we should just do what you normally do in situations like this.

Mr. CHERTOFF. Mr. Bowles, I suppose I have to ask you, first of all, do you recall Mr. Foren briefing you the first week of May concerning his intention to refer the Hale matter over to the Office of the Inspector General?

Mr. BOWLES. No, sir. You asked me in my deposition. I could not recall that.

Mr. CHERTOFF. Now, just to be clear, in saying you don't recall it, you're not going so far as to deny that it happened, I take it?

Mr. BOWLES. No, sir, I'm not.

Mr. CHERTOFF. Now, let me ask you whether you recall having a conversation with Mr. Foren about mentioning the referral to Mr. McLarty?

Mr. BOWLES. I certainly do not.

Mr. CHERTOFF. Did you mention it to Mr. McLarty?

Mr. BOWLES. I did not.

Mr. CHERTOFF. Did you have meetings with Mr. McLarty during the first week of May 1993?

Mr. BOWLES. Yes, I did.

Mr. CHERTOFF. When and where did those meetings occur?

Mr. BOWLES. To the best of my knowledge and memory, I believe that I saw Mack on the morning of my confirmation hearing. I had my wife and children, my mother and my mother-in-law with me, and we were having a quick tour through the West Wing of the White House, and I believe Mack came in and exchanged cordialities with us.

I saw Mack again, I believe on the 7th, the day I was actually confirmed by the Senate. At that time, I went over there to get my marching orders, how should I go forward, how should I report, what do I do.

Mr. CHERTOFF. When you say you went over there to get your marching orders, where did you go to get your marching orders?

Mr. BOWLES. I believe I went to his office.

Mr. CHERTOFF. How long were you there?

Mr. BOWLES. I don't know, sir.

Mr. CHERTOFF. In that period of time you were in the office with Mr. McLarty, did the subject of this referral come up?

Mr. BOWLES. No, sir. I don't believe I've ever discussed Capital Management with Mack McLarty.

Mr. CHERTOFF. After this May 5th or 6th briefing, Mr. Foren, that you had given Mr. Bowles, did you have occasion on May 19 to give him another briefing about Capital Management?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. Again, just generally, what was the subject of that briefing? Very briefly.

Mr. FOREN. The event that occurred between the 5th and the 19th was an event where Capital Management defaulted on debentures, and we were then going to proceed to foreclose collateral and throw the company into liquidation. I updated this briefing memorandum, adding those elements to it and then submitted it to Mr. Bowles' office.

Mr. CHERTOFF. Let me direct your attention further on to August. In August 1993, did you come into possession of a draft indictment of David Hale that was going to be filed in the near future in the Eastern District of Arkansas?

Mr. FOREN. Yes, we did.

Mr. CHERTOFF. Did you provide a copy of that draft indictment with a briefing memorandum to Mr. Bowles?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. You'll have to get a little closer to the mike.

Mr. FOREN. I'm sorry. Yes, I did.

Mr. CHERTOFF. I want to put it up on the Elmo. It's a document memorandum dated August 9, privileged and confidential, and attached to it are several pages of a draft indictment of David Hale.

Mr. Foren, did you—and it has your signature, Mr. Foren—did you furnish this memorandum together with the draft indictment to Mr. Bowles?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. Mr. Bowles, did you get this?

Mr. BOWLES. You asked me this question at my deposition. I do not recall receiving this memorandum. As I told you, I was on vacation from July 31 to August 8. When I returned to the SBA, I had a meeting that whole morning and into the afternoon on the secondary market. I had another meeting on a national performance review. I do not remember receiving this document. Wayne very well could have sent it to me. I just don't remember receiving it.

Mr. CHERTOFF. Did you give a further briefing to Mr. Bowles in September in connection with the upcoming or expected indictment of Mr. Hale?

Mr. FOREN. Yes, I did.

Mr. CHERTOFF. Again, was there a written memorandum supplied?

Mr. FOREN. Yes, there was.

Mr. CHERTOFF. Mr. Bowles, do you recall getting multiple briefings from Mr. Foren concerning the Hale case?

Mr. BOWLES. No, I remember having a briefing from Wayne in May 1993, after Small Business Week, I don't remember the exact date it was, and I remember the subsequent conversation I had with our ethics officer in September 1993. You have shown me two memorandums that were sent to me in between those. I simply just do not remember reviewing those memorandums or getting them.

Mr. CHERTOFF. But——

The CHAIRMAN. Did Mr. Foren say he actually met with him and briefed him?

Mr. CHERTOFF. Yes.

The CHAIRMAN. Mr. Foren, let me ask you this. I have a memo that says August 9 to Erskine Bowles, Administrator. This was sent to him?

Mr. FOREN. I believe it was sent to him. I don't know whether Erskine and I sat down around the table and discussed it, or whether I gave it to his confidential assistant. I don't remember.

The CHAIRMAN. Did you have occasion to speak to him in connection with this?

Mr. FOREN. I don't remember the specifics. I know that Erskine and I met from time to time on a variety of subjects. I do not have a distinct recollection that he and I sat down and went over this memo.

The CHAIRMAN. What about the memo in September?

Mr. FOREN. Again, I don't recall a specific time when we sat down and went over the memo, although we may well have. I just don't recall.

The CHAIRMAN. OK.

Mr. CHERTOFF. Now, Mr. Bowles, you indicated that you had a conversation with Mr. Teckler in September, also in advance of the indictment of Mr. Hale, where Mr. Teckler suggested giving a heads-up to the White House about this indictment. Why did he say you should give a heads-up to the White House?

Mr. BOWLES. Let me recount the story to you as I remember it. I may not be telling it exactly as it happened, but I'm telling you as best I recall.

Mr. Teckler came into my office. He told me that we were getting ready to indict Judge Hale down in Arkansas for defrauding the SBA, and said that I might want to call the White House and give them a heads-up. I had truly never heard the word "heads-up" before and I asked him what in the world is a heads-up. He told me it was simply notification in case they got some inquiries.

I said Marty, is this OK to do? He said yes, it is. I think he said it was standard. I asked why don't you take care of it, and he said he didn't know anybody at the White House Counsel's Office. I said fine, I'll take care of it.

Mr. CHERTOFF. What you are saying is it was standard to give a heads-up to the White House, you are saying it was your understanding from Mr. Teckler that, whenever someone is going to be cited in a SBA case, they notify the White House?

Mr. BOWLES. I can't answer that. I can only tell you what he said. I don't know what he was thinking.

Mr. CHERTOFF. What were you thinking when he said it?

Mr. BOWLES. I was thinking there was this crooked judge down in Arkansas who had defrauded the SBA and it seemed reasonable to me that they might get some inquiries. I can imagine if Jim Hunt was the President and there was a crooked judge in North Carolina or a judge that had gone crooked, that maybe he would get some inquiries. It seemed logical to me.

Mr. CHERTOFF. So your understanding was, in your mind, there was some general principle or general standard that when someone gets indicted in Arkansas, you notify the White House about it, you didn't connect this with the President in any way?

Mr. BOWLES. No, sir, I did not.

Mr. CHERTOFF. So having told Mr. Teckler you would carry through on this heads-up, you didn't carry through on it?

Mr. BOWLES. Again, Mr. Chertoff, as you and I discussed during my deposition, I was often asked to take things to the White House. I often said I'll take care of it. Sometimes I felt the right way to take care of it was to throw it in the trashcan. Sometimes it was to call somebody lower down. Sometimes it was to call somebody higher up. Sometimes I did it, sometimes I didn't. I just made a judgment. That's what I'm used to doing in the business world.

Mr. CHERTOFF. I take it this was not the kind of situation you had encountered in the business world previously, though; right? You had not encountered a situation where you were the head of an agency that had a law enforcement component?

Mr. BOWLES. No, but you're often asked to contact somebody and you do it or you don't do it as you deem reasonable.

Mr. CHERTOFF. You say you recused yourself in November 1993. What was the reason you recused yourself? What was the event that spurred that?

Mr. BOWLES. There were two things, again, as I discussed with you in my deposition. First of all, the SBA had recently published a health care brochure and there had been lots of people here in Congress who had questioned whether that was an ethical thing to do, whether it was a marketing document or an educational document.

I was literally flabbergasted by that. I never expected anybody to challenge this brochure. We tried to make it as similar to the NAFTA brochure as we possibly could, but it was challenged. I learned a lot from that process, and it sensitized me to the fact that perception is often as important as reality.

The second thing that occurred during that time period was that's when I read in the newspaper of Judge Hale's allegations. The combination of those two things told me that what I should probably do so there would not be even a perception of impropriety was to recuse myself. This was a personal judgment I made.

Mr. CHERTOFF. Did you write this recusal down anywhere?

Mr. BOWLES. As you well know, I did not.

Mr. CHERTOFF. Did you continue to sign transmittal letters and have discussions and receive reports about the David Hale matter after you made this personal decision to recuse yourself?

Mr. BOWLES. To the best of my knowledge, I did sign transmittal letters to Members of Congress, but I did not participate in, I was not involved in, I did not seek to be involved in, and I did not make any decisions concerning the SBA's handling of the Capital Management matter from that day forward.

Mr. CHERTOFF. But you didn't publicly recuse yourself?

Mr. BOWLES. I didn't think there was any requirement to publicly recuse myself, sir.

Mr. CHERTOFF. In November, did you also hear from Mr. Spotila that he had turned over documents to the White House that were confidential SBA documents?

Mr. BOWLES. Let me tell you what I do remember, instead of using your words.

I remember having a discussion with John. I don't remember what the context of it was, but John told me that he had previously sent some documents to the White House. I asked John if he had checked that out with anybody before he sent it. He said he had not. I said look, John, I don't know if this is good or bad, right or wrong, up or down, but you better check this out with somebody at the Justice Department to see if it's OK.

Mr. CHERTOFF. Did you connect this with the heads-up advice you had gotten a couple months earlier from Mr. Teckler?

Mr. BOWLES. No, sir, I did not.

Mr. CHERTOFF. You didn't see a connection between those two events?

Mr. BOWLES. No, sir, I did not.

Mr. CHERTOFF. Now I want to move you to April 11, 1994, and I want to put up a letter of that date on the Elmo if I can. I think you have it in front of you.

To set the stage for this, as of March 1994, you had actually put your recusal in writing; is that correct?

Mr. BOWLES. Excuse me. I'm sorry. I was looking for the letter and I did not hear a word you said. Can I just find the letter then?

Mr. CHERTOFF. Right.

Mr. BOWLES. Thank you. Is it in this stack of information?

Mr. CHERTOFF. It's the last letter, the last document.

As of April 11, 1994, I take it you had put a written recusal into effect the month earlier?

Mr. BOWLES. Yes, sir, that's correct.

Mr. CHERTOFF. You wrote this letter to Congresswoman Meyers in response to her inquiry concerning your recusal from the Capital Management Services matter; correct?

Mr. BOWLES. That's correct.

Mr. CHERTOFF. What was that inquiry she made of you? What did she ask you that you were responding to?

Mr. BOWLES. To the best of my memory, this letter came in. It asked a number of questions. The folks in our Legal Department and our Deputy Administrator looked at it. They prepared a response. They said the thing to which I should respond to an individual Congressperson was on my recusal. I read this letter. I edited this letter and, as I told you in my meeting, I took responsibility for it.

Mr. CHERTOFF. In the second paragraph of the letter, the first sentence reads, "Throughout my tenure as Administrator of the Small Business Administration, direct responsibility for the handling of all aspects of the investigation of and prosecution of any SBIC or SSBIC suspected of wrongdoing has been delegated to the Career Investment Division and Office of General Counsel personnel who normally are involved in such cases. Capital Management has been treated in the same manner as all such other cases."

Now, Mr. Spotila, who was your General Counsel, was a political appointee, correct, not a career official?

Mr. BOWLES. That's correct.

Mr. CHERTOFF. In fact, you appointed him on recommendation from the First Lady's Office; is that correct?

Mr. BOWLES. I appointed Mr. Spotila for a number of reasons as you and I discussed previously.

Mr. CHERTOFF. That was one of them; right?

Mr. BOWLES. May I say why I appointed him? He was sent over to me on a list from Presidential Personnel. I reviewed that list. I met with each of the people, I believe, who were recommended on that list. Mr. Spotila's professional background experience was superior. He was a graduate of Georgetown and Yale Law School.

The CHAIRMAN. Mr. Bowles, come on. Was there a recommendation from the First Lady's Office included, yes or no?

Mr. BOWLES. Yes, there was.

The CHAIRMAN. OK. Let's proceed.

Mr. CHERTOFF. Is there some reason you omitted to mention that Mr. Spotila had been involved in making decisions concerning the handling of the Capital Management file?

Mr. BOWLES. I don't believe I made any effort not to say he hadn't had some involvement in it. This thing was, in large part, I believe, managed by the Career Investment Division and the Office of General Counsel personnel, and Mr. Spotila is a member of the Office of General Counsel personnel.

Mr. CHERTOFF. But Mr. Spotila is not a career official and Mr. Spotila made a decision to send the documents over to the White House; correct?

Mr. BOWLES. That is correct, both of those.

Mr. CHERTOFF. Let's go to the next sentence. "I have never reviewed the Capital Management file." Did you mean to suggest when you wrote that sentence to Congresswoman Meyers that you had deliberately kept yourself away from getting any information about the Capital Management case?

Mr. BOWLES. No, sir, I did not.

Mr. CHERTOFF. Isn't it a fact that, even to the extent of your own recollection, you've admitted to receiving some briefings and information about the handling of the Capital Management case?

Mr. BOWLES. Yes, I felt I had been briefed in a manner that was appropriate for somebody in my position.

Mr. CHERTOFF. When you said "I have never reviewed the Capital Management file," were you intending to draw some distinction between having been orally told about things in the file and having physically poured over the file on your desk?

Mr. BOWLES. No, I really tried to say what this says. I mean, I really believe that to be accurate. I hadn't reviewed the file. I hadn't studied the file. I hadn't spent a long time going over it. As you have said, I remember the briefing in mid-May. I remember the discussion with Mr. Teckler in September. You have shown me two small memorandums that were sent to me, one in August and one in September.

As you and I discussed during my deposition, those happened to be very busy times for me. I may have spent some time reviewing it, I may not have, but that's what I remember.

Mr. CHERTOFF. You weren't caught by surprise with the letter. You had an opportunity to have staff prepare a draft, you had an opportunity to edit it as you've indicated, presumably you had an opportunity to go into the files, and it was your decision to sign off on the letter this way.

I just want to ask you one final question. Do you stand by the statement, in light of the evidence that's been presented before you, that you have never reviewed the Capital Management file?

Mr. BOWLES. Yes, sir, I do.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Foren, when did you refer the Capital Management case to the Inspector General?

Mr. FOREN. May 5, 1993.

Senator SARBANES. When was Hale indicted?

Mr. FOREN. On September 22 or 23, during that period in 1993.

Senator SARBANES. You don't specifically recall, it was either September 22 or 23 that he was indicted?

Mr. FOREN. I don't recall the specific date, but it would have been around that time.

Senator SARBANES. So about 4½ months later?

Mr. FOREN. About 120 days, thereabouts.

Senator SARBANES. Now, is the briefing paper that you assert here this morning you prepared for Mr. Bowles, is that this two-page thing that begins with "summary"?

Mr. FOREN. Yes, it is. It's entitled "Capital Management Services, Inc.," and gives Little Rock, Arkansas, and the license number.

Senator SARBANES. It then has summary and background and goes for two pages; is that correct?

Mr. FOREN. That is correct. May 5, 1993, is the last item.

Senator SARBANES. Let me ask you, did you say that Mr. Bowles on the basis of your briefing—was this an oral briefing of Mr. Bowles?

Mr. FOREN. No, I submitted the two-page document——

Senator SARBANES. But on the basis of that briefing, he told you to go ahead with the referral; is that correct?

Mr. FOREN. That is correct. My question to Erskine was do you want it referred today, do you want it referred before your confirmation or after your confirmation.

Senator SARBANES. You had given him this briefing so he could have some knowledge about it in responding to that question; is that correct?

Mr. FOREN. As I recall, we talked over the phone. We are talking about events that occurred 2 years ago. It's hard to recall. As I recollect——

Senator SARBANES. Did he have the benefit of having this briefing paper——

Mr. FOREN. Not when we talked over the phone, as I recall. As I recall, I prepared the briefing paper and submitted it to him. The discussion preceded——

Senator SARBANES. So he could make the decision on the referral?

Mr. FOREN. No, it was not so that he could make a decision on the referral. As the program head, I felt it was appropriate to make a referral which, under the rules, is the way we normally did things at the SBA.

My purpose in briefing Mr. Bowles was to, as he used the word, give him a heads-up because he was entering confirmation hearings and this could well have been a matter brought up at those hearings. This paper was submitted to him after we had the conversation. It was prepared in the format of another paper that I had prepared for him on another case a couple of weeks previously.

Senator SARBANES. When was that other paper prepared?

Mr. FOREN. Around April 19, I believe. Yes, April 19.

Senator SARBANES. Was that paper dated?

Mr. FOREN. I believe it was, yes. It would take me a minute to find it, but——

Senator SARBANES. Could you take a minute and find it?

Mr. FOREN. Senator, I'll have to submit it for the record. I'll find it, I do have it, and I will be happy to submit it.

Senator SARBANES. Do you have it there with you?

Mr. FOREN. I thought I threw it in the packet this morning, but I don't recall under what tab.

The CHAIRMAN. We have a copy here. Why don't we furnish you with a copy. It is in the folders.

Mr. FOREN. No, this is a different one. It gets confused with the paper. This is the May 19 submittal and it had to do with Capital Management. The other one had to do with Kitty Hawk Capital, which was a company Mr. Bowles had an ownership interest in.

Senator SARBANES. When was that briefing paper prepared?

Mr. FOREN. That was prepared on April 19 according to the date that I put on the top of the paper.

Senator SARBANES. So you recollect putting a date on that paper?

Mr. FOREN. Yes, I did.

Senator SARBANES. This one was prepared 2 weeks later?

Mr. FOREN. This was prepared, to my recollection, on May 5. Many things happened on May 5. On May 5 a decision was made to do the referral. We did, in fact, do the referral and we issued a letter to David Hale notifying him that we were not going to go along with the reversal of the transactions and that we had made a referral of Capital Management to the Inspector General because we didn't get the information we sought on the noncash assets.

Senator SARBANES. You told Hale that he had been referred to the Inspector General?

Mr. FOREN. That's right.

Senator SARBANES. When did you tell Hale that?

Mr. FOREN. We told him that by memorandum faxed to him on May 5.

Senator SARBANES. He had been informed at that point, is that correct, that he had been referred over to the Inspector General?

Mr. FOREN. That is correct. See, for 6 months I had tried to get the answers to the questions voluntarily. It didn't happen, so we had no other alternative and I felt it was appropriate to notify him of that fact.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Foren.

Mr. FOREN. Good morning.

Mr. BEN-VENISTE. How many years have you been with the SBA?

Mr. FOREN. Twenty-seven.

Mr. BEN-VENISTE. If I understand your testimony, you found Mr. Hale and his company, CMS, to be one of the most blatant fraudulent enterprises that you had ever seen in your 27 years at the SBA; is that correct?

Mr. FOREN. That's my opinion and I've spent 13 of those 27 years in the SBIC program, as an examiner, as an investigator, as a financial analyst, as chief accountant, and as program head.

Mr. BEN-VENISTE. So when you met with this crooked judge in Little Rock, Mr. Hale, and he told you to your face that this is the way that we do business in Arkansas in terms of receiving these illiquid assets, which he was purporting to present to you in order to leverage the money available to him from the Government, you had some question in your mind about whether he was telling you the truth?

Mr. FOREN. That is correct, but I would clarify. The meeting did not occur in Little Rock. It occurred in my office, if we're talking about February 19.

Mr. BEN-VENISTE. My reference to Little Rock was the place where Mr. Hale held office as a municipal judge.

Mr. FOREN. That's right.

Mr. BEN-VENISTE. So it was your view that you were skeptical about what he was telling you; correct?

Mr. FOREN. That's true.

Mr. BEN-VENISTE. Later on, as you got further into the matter and as you developed your criminal referral, you had reason to believe that Mr. Hale was lying to you, didn't you?

Mr. FOREN. I certainly did not believe we were getting the answers that we would need, yes.

Mr. BEN-VENISTE. The indictment that was returned against Judge Hale was that, in essence, he had defrauded the SBA, that he had lied and cheated the SBA; correct?

Mr. FOREN. That is correct.

Mr. BEN-VENISTE. Mr. Shepperson, good morning to you, sir.

Mr. SHEPPERSON. Good morning.

Mr. BEN-VENISTE. Did you have occasion to meet this crooked judge at some point?

Mr. SHEPPERSON. Yes, I was present in the meeting that we had with Judge Hale; I believe it was February 19.

Mr. BEN-VENISTE. At that time, as Mr. Chertoff has brought out, Mr. Hale was prepared to do some name-dropping, wasn't he?

Mr. SHEPPERSON. Yes.

Mr. BEN-VENISTE. Among the names that he dropped, was that of President Clinton?

Mr. SHEPPERSON. Yes, that's correct.

Mr. BEN-VENISTE. You, in your experience with the SBA—of how many years by that time?

Mr. SHEPPERSON. I'd only been with the SBA for a little over a year at that point.

Mr. BEN-VENISTE. In connection with your evaluation of what Mr. Hale was telling you, you sized him up as a name-dropper, as a blusterer, did you not?

Mr. SHEPPERSON. I believe the term I used in my deposition was that he seemed to be blustering.

Mr. BEN-VENISTE. You pegged him as a name-dropper?

Mr. SHEPPERSON. That's correct.

Mr. BEN-VENISTE. There was no information that Mr. Hale provided you that suggested he had access to, much less influence on, the President of the United States, was there?

Mr. SHEPPERSON. No, he didn't provide any information, but there's another tidbit that goes along with this discussion that I don't think has been brought out before.

During the period of time between November and the Inauguration when the Administration was in the process of transitioning—and, again, I am going on hearsay information—one of the staff people from the transition team, as I recall it was Mr. Stephanopoulos, contacted the former Associate Deputy Administrator, it was Mitchell Stanley who was Wayne's immediate superior, and explained to Mr. Stanley that they were aware of this program and thought that this program was very beneficial and had been beneficial, I believe in Arkansas, and asked several questions about Mr. Foren and his management capabilities and so on.

Based on that information which was referred to me shortly after that had happened, and being aware that there was only one SBIC

or SSBIC in the State of Arkansas which was located in Little Rock, presumably he was aware of this particular program.

Mr. BEN-VENISTE. Mr. Stephanopoulos was?

Mr. SHEPPERSON. No, the President, the President-elect was aware of the program.

Mr. BEN-VENISTE. All of this hearsay conversation you've provided leads back to Mr. Stephanopoulos.

Mr. SHEPPERSON. Yes.

Mr. BEN-VENISTE. Now, Mr. Foren, let me ask you, what was the nature of Judge Hale's crooked activities?

Mr. FOREN. Misrepresentation. It started back in 1986 with a capital increase that I'm aware of in Capital Management resulting from a financing that was made in the amount of around $800,000, part of which was used to pay off mortgages, and the balance put back into Capital Management, $502,000, represented as clear capital increase. Then they turned around and made three loans on or about that time. One was to Master Marketing, one was to Jim Guy Tucker, and the third was to a communications company to Stephen Smith. When you look at the transactions in retrospect, when they came along and got leverage from us, that was not a legitimate capital increase, and those loans were never repaid.

What he did was to take loans that were in trouble, not performing, and swap them for another portfolio security that never performed and then swap that security for another security that never performed. It was just blatantly fraudulent.

Then, in 1988, there was a capital increase of $400,000, and $400,000 was used to pay off one portfolio security, bring a couple three others current, and it turns out that money was borrowed from some client's account, from a stockbroker, run through the company, shown as a capital increase, and then the $800,000 was represented as three loans going out to other small business concerns and money returned to the account.

To me, that's fraud.

Mr. BEN-VENISTE. So the man had no compunction about lying to the Government in terms of these things?

Mr. FOREN. There were false representations to the Government, yes.

Mr. BEN-VENISTE. Let me ask you, in your conversations with David Hale, did he ever tell you that he had done any business with President Clinton?

Mr. FOREN. No, he did not.

Mr. BEN-VENISTE. Did he ever tell you that President Clinton had asked him to make any loan or do any business with anyone else?

Mr. FOREN. No, he did not.

Mr. BEN-VENISTE. Now, is it the case, on the very day that you discussed with Mr. Bowles the idea that you would be making a criminal referral relating to David Hale and his company, that Mr. Bowles told you to go ahead and do it right away?

Mr. FOREN. That is correct.

Mr. BEN-VENISTE. Is it correct, Mr. Foren, that in all of your dealings with Mr. Bowles on this subject that you do not believe that he did anything that was inappropriate?

Mr. FOREN. That Mr. Bowles——

Mr. BEN-VENISTE. Yes.

Mr. FOREN. I find nothing inappropriate in anything he did.

Mr. BEN-VENISTE. You did nothing inappropriate in your view?

Mr. FOREN. Absolutely.

Mr. BEN-VENISTE. No one put any pressure on you out of fear or favor anticipated that you ought to go easy on Judge Hale because he had this supposed connection in Little Rock?

Mr. FOREN. No.

Mr. BEN-VENISTE. To the contrary, you were advised to go ahead, treat this as you would treat any other case and do it speedily?

Mr. FOREN. Absolutely.

Mr. BEN-VENISTE. The absolute opposite of any favor, fix, or consideration to be given to somebody for improper purposes.

Mr. FOREN. That is correct.

Mr. BEN-VENISTE. Mr. Bowles, in connection with your conversations with Mr. Foren on this subject, did you receive from anyone at the White House any instruction, suggestion, or request to treat Mr. Hale in any particular way?

Mr. BOWLES. Not to the best of my knowledge, no.

Mr. BEN-VENISTE. More to the point, did anyone suggest to you that he should be given favored treatment in any way?

Mr. BOWLES. No.

Mr. BEN-VENISTE. Mr. Foren, let me ask you about the timespan between the criminal referral that was made on May 5 and the September indictment of Mr. Hale.

Comparing that to the length of time, on average, between the submission of a criminal referral and the return of an indictment, how would you characterize the timespan?

Mr. FOREN. It was rather swift.

Mr. BEN-VENISTE. Swift.

Mr. FOREN. The FBI already had information on the 1988 transactions, and they presented that to us and said do you see a problem with that. When we saw it, we said absolutely, this is blatantly fraudulent.

Mr. BEN-VENISTE. Everything that the FBI had developed on its own only confirmed your worst fears about Mr. Hale, that he was an absolute fraudulent character in terms of dealing with the Government?

Mr. FOREN. What I saw in 1992 appeared to me to be an attempt to phony up the balance sheet to get financial assistance of the Government which was fraud. I was not aware of the 1988 or the 1986 transaction. When we became aware of the 1988 transaction, it only confirmed in my mind we had a problem.

Mr. BEN-VENISTE. Now, in terms of the swiftness of action between the referral that you made and the indictment of Mr. Hale, is that consistent with anyone providing favor to Mr. Hale or improper consideration to Mr. Hale?

Mr. FOREN. No.

Mr. BEN-VENISTE. Quite the opposite, isn't it?

Mr. FOREN. That's correct.

Mr. BEN-VENISTE. Let me turn to the issue of the letter that you, Mr. Bowles, sent in response to Congresswoman Meyers' request on April 11.

Mr. BOWLES. Can you give me just a second to find it?

Mr. BEN-VENISTE. Surely.

Mr. BOWLES. All right, sir.

Mr. BEN-VENISTE. Let me ask you, sir, again, whether you reviewed any files relating to the Hale investigation?

Mr. BOWLES. No, sir, I did not.

Mr. BEN-VENISTE. Now, I would like to call to the Committee's attention the testimony of Mark Stephens. Who is Mark Stephens?

Mr. BOWLES. Mark Stephens is in the Legal Department at the SBA.

Mr. BEN-VENISTE. Do you know how long he has been with the SBA?

Mr. BOWLES. I'm sorry, I do not.

Mr. BEN-VENISTE. Do you know, Mr. Foren?

Mr. FOREN. No, but it's been several years, a number of years.

Mr. BEN-VENISTE. Is he a career person?

Mr. FOREN. Yes.

Mr. BEN-VENISTE. At page 164 of his deposition, Mark Stephens is asked:

Question: Are you aware of the fact that at some point Mr. Bowles indicated to the Congresswoman that he had not previewed any files?
Answer: Yes, sir.
Question: And was that accurate based on what you knew?
Answer: To the best of my knowledge, it is accurate.

At page 165, he's asked:

Question: And when he later said that he had not received any information, do you recall that, do you believe that to be a correct statement?
Answer: Yes, I believe that to be a correct statement. He was informed only to press information, to my knowledge, only asked the stuff to keep him apprised that there was a press matter and he was signing letters that were going over to the Committee because it was a formal request coming from the Chairman of the Small Business Committee.

Then, with respect to Mr. Spotila, whose qualifications and credentials have been raised here by my friend, Mr. Chertoff, Mark Stephens, at page 210, is asked:

Question: And you've also testified at some point Mr. Spotila, and Mr. Bowles as well, essentially recused themselves from these matters involving Mr. Hale and CMS?
Answer: Yes, he did.
Question: Did they ever try to influence your investigative work at all?
Answer: No, sir, absolutely not.
Question: Did they ever encourage you or pressure you to do anything that you thought was inappropriate in any way?
Answer: No, sir. Mr. Spotila in fact said, you know, you have the ball. You run with it. You take it wherever it goes.
Question: Did you ever get any pressure from anyone at the White House, Mr. Eggleston in particular?
Answer: No, sir.

So, if I understand, Mr. Foren, the substance of what you are telling us here today is that, in connection with Mr. Bowles' activity, you regarded it to be, to the best of your knowledge, appropriate in all respects?

Mr. FOREN. That is correct.

Mr. BEN-VENISTE. With respect to the criminal referral of Mr. Hale, whom you regard as an individual engaged in one of the most fraudulent activities that the SBA has seen during your considerable tenure there, you regard that activity in terms of the criminal referral presented and the subsequent indictment of Mr. Hale as

having been speedily accomplished, free of any favoritism, and appropriate in all respects; is that correct?

Mr. FOREN. That's correct.

Mr. BEN-VENISTE. I have nothing further.

Senator SARBANES. Senator Dodd.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Mr. Chairman, briefly, it seems to me what we're looking at here, while you have different conversations at the bottom line, we've got to get to the bottom line. The bottom line here is, in fact, matters were handled appropriately. In fact, the professional staff, the career people, have all supported the fact that this matter was dealt with in a casebook way, it seems to me, as I listen to the testimony.

I ask you this, Mr. Foren. Now knowing all the conversations that have gone forward, does this strike you as exactly an appropriate way in which a matter like this should be handled?

Mr. FOREN. Yes.

Senator DODD. Mr. Shepperson.

Mr. SHEPPERSON. Yes, it does.

Senator DODD. I'm not asking you that question, Mr. Bowles, because I'm talking to the people who are career people, in a sense, who understand the background of this, but I commend you, Mr. Bowles, for what you did, frankly. It seems to me for someone who is not experienced in the ways of Washington, coming from the business community, your instincts, using your personal judgment as you've described it, functioned in a way that all public officials in a similar capacity should handle their matters that come before them that look like this or may approximate this kind of situation.

Mr. Chairman, I would hope we would offer some commendation to these people, they've done a good job it seems to me, and that this Committee would reflect its appreciation for how this matter has been handled by them. We should commend them for the fact that they're worthy indictments, they went forward expeditiously, and that matters were handled well.

We bring people before these committees and, as we all know, the assumption is if you are in this room and at that table, you've done something wrong. Based on the career people's long experience here, what we have is quite the contrary.

We have people who did a very, very good job and ought to be commended for performing their duties in a professional, competent, thorough, ethical way. I hope the Committee will reflect in its judgment the way Mr. Bowles and his office and staff and the people who are sitting with him handled their job. I commend all three of you for doing good work.

Senator SARBANES. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much, Mr. Chairman.

Mr. Foren——

Mr. FOREN. Foren.

Senator BOXER. Mr. Foren, did you know Mr. Bowles before he was nominated for his position by the President of the United States?

Mr. FOREN. No, I did not.

Senator BOXER. Yet you felt it was important to alert him to this crooked judge, Judge Hale, because you thought a question concerning an investigation could come up in the course of the confirmation; is that correct?

Mr. FOREN. I felt that I had a responsibility to brief Mr. Bowles, before his confirmation, of a potential problem.

Senator BOXER. OK. Mr. Bowles did not raise this issue with you, you raised it with him; is that correct?

Mr. FOREN. Oh, absolutely. I would like to add, I didn't go to Erskine asking for a decision as to whether I should make the referral. I had made a decision we were going to make the referral. I was just going to him to brief him on it and to find out the timing that he would prefer, that's all.

Senator BOXER. What you have said to us today is that he basically said that this case should be treated as any other such case; is that correct?

Mr. FOREN. The response by Erskine at the time, as I recall, was make the referral today.

Senator BOXER. Make the referral today.

Mr. FOREN. Today.

Senator BOXER. Not I'll get back to you, not let me think about this, not oh my goodness, the President, he mentioned the President, he mentioned other Democratic officeholders, Mr. Bowles said nothing like that that you can remember?

Mr. FOREN. No.

Senator BOXER. He simply said make the referral today.

Mr. FOREN. Make it today.

Senator BOXER. In fact, the referral was made and the indictment came down very quickly; is that correct?

Mr. FOREN. The referral was made that day, Hale was notified, and within 120 days, the indictment occurred and we had the company in receivership.

Senator BOXER. Did you have any——

Senator SARBANES. Was Hale notified that very day?

Mr. FOREN. Yes.

Senator SARBANES. On May 5?

Mr. FOREN. On May 5.

Senator SARBANES. As soon as you decided on the referral, you told Hale; is that right?

Mr. FOREN. That's right. We prepared a letter, faxed it to him, and we indeed got a response back from him that very same day.

Senator BOXER. Thank you. When he said that to you, when Mr. Bowles, President Clinton's appointee for the SBA, said that to you, do it today, how did you feel about his response? Were you relieved, were you pleased, were you surprised, were you glad?

Mr. FOREN. It was not a surprise or anything. It was just that I had done my job in briefing my future boss, with whom I've had an excellent working relationship, and we proceeded to march.

Senator BOXER. If he had said anything other than that, I assume you might have——

Mr. FOREN. I would have been surprised.

Senator BOXER. —been surprised or upset?

Mr. FOREN. I would have been very surprised.

Senator BOXER. You had respect for Mr. Bowles, he fulfilled that hope about himself by just saying go ahead and do it today?

Mr. FOREN. That's right.

Senator BOXER. I just want to thank you very much. I don't have any other questions.

Senator SARBANES. Our time is expired, Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Thank you very much, Mr. Chairman.

Mr. Bowles, could you give us a little background on the manner in which you structured your organization relative to reporting from those who would provide you with information as a matter of course so that you could be informed of responsibilities that would appropriately come to your attention?

Mr. BOWLES. The SBA was organized along divisions. There was an Administrator, a Deputy Administrator, and then there were three Associate Deputy Administrators. They headed up the three areas that at one time were procurement, which included the 8(a) program; the financial operation, which included the SBIC program; and then the economic development operation, which was the business development——

Senator MURKOWSKI. One was Mr. Foren's responsibility?

Mr. BOWLES. Mr. Foren was under one of those.

Senator MURKOWSKI. When memorandums would come in in your absence, when you're on vacation or whatever, what was the disposition of those that were directed to you for information purposes?

Mr. BOWLES. Generally, memos were not sent just to one person. Most memos that I saw were circulated among a group of people that would include lots of people. Wayne may have sent these only to me. I just don't know.

Senator MURKOWSKI. You don't know, but I assume there's a process in your office, a secretary or somebody gets the material that's sent from Mr. Foren or others for information for you. My question is, you indicated you don't remember, it may have come in, but you indicated you were gone on vacation for a week.

Isn't there a normal function of those catching up with you later or review or do you initial things as a matter of course, does your secretary keep a log? I find it extraordinary for a man of your experience, and particularly in the private sector, not to have some check system or tickler system so that you can assure yourself that you have a knowledge of an ongoing nature relative to matters of this concern and of this magnitude. You offered an explanation that it could have come in, but you don't remember.

Mr. BOWLES. Senator, it was handled in different ways. Outside mail that would come in from Members of Congress or people outside the SBA would go to the Executive Secretariat of the SBA and it would be routed to a lot of different people depending on what the subject matter was. Even if it was addressed just to me it would quite often be sent to someone else to handle, and I would not see it.

However, some people did send information to just me, and it would have been sent straight to my office. Now, I don't know how

Wayne did this, because I honestly don't remember receiving these, but I received so much.

One of the things that's hard for you or others to understand is the amount of information that (a), came into the SBA on a daily basis; but (b), much more importantly, the backlog of old letters, old correspondence, old information that was stacked up for months and months and months when I got there.

Senator MURKOWSKI. I understand that, but let's go back to your recusal, where you recused yourself.

Mr. BOWLES. Yes, sir.

Senator MURKOWSKI. Let's go to the timing of the knowledge that indeed this matter had gotten to the point where Hale was involved in a fraudulent action. Give me the time sequences of when it became known, Mr. Foren, in the SBA hierarchy that is under the responsibility of Mr. Bowles, and the recusal time of when Mr. Bowles recused himself.

Mr. FOREN. As I stated, I briefed Erskine on May 5, 4th or 5th, and gave him that outline and that was submitted to the agency liaison.

Senator MURKOWSKI. Which he doesn't remember.

Mr. FOREN. Which he doesn't remember, but I remember distinctly furnishing it.

Senator MURKOWSKI. Can you give us the circumstances, you furnished it by dropping it in his office?

Mr. FOREN. No, I would have hand-delivered that to Kris Swedin and physically given it to her.

Senator MURKOWSKI. Who was Kris Swedin?

Mr. FOREN. The agency liaison with Erskine at the time. He was not the Administrator, he was not in place, yet he was a designate.

Senator MURKOWSKI. You gave them to that person?

Mr. FOREN. I gave them to that person.

Senator MURKOWSKI. I assume Counsel is going to review or we have a deposition relative to what the recollection is of the person receiving?

Mr. FOREN. No, my standard practice on these memos, anything that went to Erskine, the Administrator's office, that I felt deserved his immediate attention, I would hand-carry down to his confidential assistant.

Senator MURKOWSKI. Would that confidential assistant have a record of receiving it? You don't know?

Mr. FOREN. I don't know.

Senator MURKOWSKI. But you recall it.

Mr. FOREN. I recall it, yes.

Senator MURKOWSKI. Do we have any record of the confidential material being delivered?

Mr. CHERTOFF. I don't think there are any records of that in the record productions we've gotten from the SBA.

Senator MURKOWSKI. Have we taken a deposition from the party receiving it?

Mr. CHERTOFF. I don't believe we have taken a deposition of the confidential assistant.

Senator MURKOWSKI. I'll leave that up to Counsel to make a determination. Clearly, you remember giving it.

Mr. FOREN. This, to me, was a very sensitive case and a very important subject.

Senator MURKOWSKI. Now, tell me, Mr. Bowles, the time sequence of when you recused yourself from any activity.

Mr. BOWLES. You are talking to me?

Senator MURKOWSKI. That's correct.

Mr. BOWLES. I recused myself in November 1993.

Senator MURKOWSKI. And you took this down in May?

Mr. FOREN. The briefing outline would have gone to Kris on May 5. The other memos would have been carried down about the date that they were dated to his office, to his confidential assistant.

Senator MURKOWSKI. How close was this to November?

Mr. FOREN. There was one done on August 6, one done on September 21, and that was the last one. By then we had, in effect, the horse in the barn. We had the company in receivership and Hale had been indicted.

Senator MURKOWSKI. So Mr. Bowles recused himself after this series of memorandums?

Mr. FOREN. That's correct.

Senator MURKOWSKI. Again, would you, just very, very briefly, explain the justification for recusing yourself.

Mr. BOWLES. Yes, sir.

Senator MURKOWSKI. Yes, very, very briefly.

Mr. BOWLES. There were two issues that caused me to feel I should recuse myself. First of all, in early November there was a tremendous amount of publicity that was in all of the national magazines and newspapers where David Hale was making these allegations about some purported connection between him and the President.

Second——

Senator MURKOWSKI. So what? I mean, what concern did you have over that?

Mr. BOWLES. I had been appointed to the President, I felt close to the President, even though I hadn't spent a lot of time with him. I felt, based on my own personal judgment, that the right thing for me to do so there wouldn't be any perception of impropriety, was to recuse myself from that matter.

Senator MURKOWSKI. When you did, you had still no knowledge of the flow of information concerning this matter?

Mr. BOWLES. I'm sorry, I don't understand the question, sir.

Senator MURKOWSKI. You indicated that you had not received the memorandum from Mr. Foren, that you had little knowledge of the file, and that you may have been briefed, but I find——

Mr. BOWLES. That's not what I said, Senator.

Senator MURKOWSKI. Tell us what you did say.

Mr. BOWLES. I was briefed in mid-May. I said I do not remember receiving the one- or two-page memorandums that Wayne sent to me, although he very well could have, and——

Senator MURKOWSKI. You've indicated just a few moments ago that, because of the escalation of the issue of Judge Hale and the fraud and so forth, you found that as one of the reasons for recusing yourself because, in theory, one can interpret the issue as beginning to heat up.

Mr. BOWLES. No, sir, I felt it was a proper thing for me to do, period.

Senator MURKOWSKI. Because of the escalation, you just said so.

Mr. BOWLES. That's when I remember reading the allegations that Judge Hale was making about a connection between him and the President, and I felt the proper thing for me to do was to recuse myself from all decisionmaking matters as it related to Capital Management.

Senator MURKOWSKI. That was a major reason for your recusal?

Mr. BOWLES. I said there were two reasons. The second reason is I had been sensitized, since I came here, about how important perception is in this town. That was as a result of going through this health care brochure matter which I mentioned earlier.

Senator MURKOWSKI. I find the second reason an extraordinary interpretation of the Washington process. If you are talking about a health memorandum as justification for recusing yourself, I find that pretty hard to accept. The other one I can certainly understand because, clearly, things were starting to heat up and it was very convenient from your point of view to recuse yourself.

Mr. BOWLES. Senator, I had never——

Senator MURKOWSKI. Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Bowles, my perception there was you were not allowed to fully develop your answer on your reasons for recusing yourself in response to Senator Murkowski's question. I thought you were trying to add to it right there at the end. Why don't you go ahead and take some time to do that.

Mr. BOWLES. I don't want to be impolite or do the wrong thing, but——

Senator MURKOWSKI. That's all right. I've got hard skin.

Senator SARBANES. You should be able to lay out a full answer and not be cut off from doing so.

Mr. BOWLES. I have never in my life had my ethics challenged and when we prepared this health care brochure to convince and educate the small business populace about the health care plan, several people in Congress got up and challenged the ethical propriety of that. I was amazed. We tried to make it as close as we could to what had already been done for the NAFTA brochure, and that's all it was.

As I tried to tell the Senator, that showed me that perception in this town is often as important as reality is. In this case, I didn't want there to be even the perception that I had done anything that was improper, or would do anything that was improper.

Senator SARBANES. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I originally had thought not to ask any questions because I frankly believe that Mr. Foren and Mr. Bowles have responded forthrightly to the Committee's questions, but I think we really have reached a point where Mr. Bowles ought to be given the opportunity to expand further on a couple of points that he attempted to make, the first having to do with what he found when he arrived at the SBA

in terms of backlog, the amount of paperwork, and the condition of the agency because certainly that would, I think, put an important context on the matter of the CMS referral.

Mr. Bowles, you started to talk about what you found when you got there in early May, and I think you ought to be given an opportunity to continue and to expand on that response.

Mr. BOWLES. Thank you, Senator. I don't have much to add other than the SBA is a great agency. You talk about a place that I was proud to have a chance to work and a group of people who I found were ready to do what it took to really help the small business owners of this country, I mean, it was a great experience for me. But when I arrived there—Wayne, you probably remember this—there was just stacks and stacks and stacks of mail, boxes, requests, and information that hadn't been processed in forever. That's just not, as a businessperson, something that I'm willing to live with. So we just dug into it, we worked nights, we worked almost all weekends.

We did what it took to bring the SBA up to a more efficient, more effective organization. Then we set out to reorganize the SBA so it could be more efficient, more effective, by flattening the size of it, downsizing it, and trying to be able to give better customer service. Those were the kinds of things we tried to do. It did take an enormous amount of time.

Senator MOSELEY-BRAUN. Given the fact that the CMS referral had been something that, I guess—even the conversation with Mr. Foren happened the day before you were confirmed in which he asked for permission to go forward with the referral?

Mr. BOWLES. Senator, I honestly don't remember that conversation. I would like to be able to verify it because it makes me sound good, but I just don't remember it.

Senator MOSELEY-BRAUN. I guess the question then is in terms of this particular issue in the scheme of things that you found at the SBA, was it number one priority, two priority, or three priority? On your list of priorities, where would you say this issue fell?

Mr. BOWLES. Senator, you and Senator Bond both know a lot about the SBA because you serve on the Small Business Committee, but if you think about what the SBA does—and I'll do this very quickly because I don't want to waste your time—we have a financial operation that has a 7(a) lending program which puts about $6 billion to $8 billion of money out. We have a 504 and a 503 program which puts long-term capital out. We have a working capital line of credit and an export revolving line of credit which Wayne helped us fix up. We have the SBIC program and the SSBIC program. That's just under the finance operation.

Then, under business development, we have the business information centers and the small business development centers which are throughout the country. We have operations on lots of college campuses.

We also have a disaster assistance program which nobody knows the SBA is involved in, but every time there is a disaster, we are the people that take care of the homes and businesses that get hurt in disasters. We have a procurement operation that procures over $60 billion of Government contracts for small businesses, and the 8(a) program which is part of the procurement operation.

You have the budget to deal with, you have the personnel to deal with, and you have the reorganization to deal with. Outside of that, I had the responsibility in the NAFTA, I had responsibility on the health care plan, I had responsibility for the Midwest floods. All of those outside activities took a lot of time.

Senator MOSELEY-BRAUN. Thank you very much, Mr. Bowles.

The CHAIRMAN. Senator Sarbanes, do you have anyone else?

Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman.

I guess I should start out by saying Mr. Bowles will recall, I believe, I was one of the ones who raised the question about the health care memorandum which I felt was inappropriate in a political document, so we have discussed that aspect before.

Mr. Bowles, I'm not sure I heard in prior discussion or in your deposition, when did you first learn that there might be some connection between Capital Management Services, David Hale, and the President and the First Lady?

Mr. BOWLES. The first I remember of it is when these allegations were in the newspaper. I don't remember them before that.

Senator BOND. Now, about what time was that?

Mr. BOWLES. I believe that was in November 1993.

Senator BOND. What was the date of David Hale's indictment?

Mr. FOREN. It was about the 23rd of September.

Senator BOND. About September, so it came out in the newspaper then. You did not know at the time that there was potentially some connection between the Clintons and CMS in the spring of 1993?

Mr. BOWLES. I don't remember anything that I would have considered—I don't remember anything to begin with and I guess if I heard something, I didn't think it was credible.

Senator BOND. Mr. Foren, you were questioned by the staff of the Small Business Committee on Capital Management Services and David Hale prior to May 5, were you not? Had you not been questioned by Mr. Ball and others about Capital Management Services?

Mr. FOREN. We had had some discussions prior to that date, yes.

Senator BOND. Did you know at that time of the potential relationship between Judge Hale, Capital Management Services, and the Clintons?

Mr. FOREN. No, I was not aware of the allegations until I read them in the newspaper, very frankly, which would have been about the time they were made.

In May, prior to the time I made the referral, my total focus was on the noncash—the 1992 transactions, capital increase, request for leverage, and what appeared to be unfolding, as of May, as perpetration of a fraud on the agency.

That was my total focus. I had no knowledge of anything relative to the allegations concerning Master Marketing and so forth until I saw it in the newspaper.

Senator BOND. Mr. Shepperson, you mentioned questions during the transition period from Mr. Stephanopoulos about the SBIC in Arkansas. What were those questions, what issue was raised?

Mr. SHEPPERSON. My recollection was that Mr. Stephanopoulos had contacted the Associate Deputy Administrator, who, again, was in that level between Erskine and Wayne.

Mr. BOWLES. I wasn't there then.

Mr. SHEPPERSON. I know. That's correct. He had contacted him during this interim time inquiring about our program. He indicated that the Administration was aware of this program and that it had been successful in helping small businesses in Arkansas. Mr. Foren is the one that conveyed the information to me, as I recall, that Mr. Stephanopoulos was questioning Mr. Foren's ability to manage the program and how effective the program had been, and that they were very interested in this program, in utilizing the SBIC program, which was nice to hear.

Senator BOND. But you did not at that time learn anything about any possible connections?

Mr. SHEPPERSON. Oh, no, no.

Senator BOND. Mr. Foren, you did not learn anything about those connections at that time?

Mr. FOREN. At that time, no.

Senator BOND. Mr. Bowles, this letter of April 11, 1994, you wrote to Congresswoman Meyers, what generated that letter?

Mr. BOWLES. I believe she sent a letter to the SBA.

Senator BOND. Did she send a letter, or did she have a telephone conversation?

Mr. BOWLES. I'm sorry. I'm just not positive. I don't know. I thought she had sent a letter. I just don't know.

Senator BOND. I'd ask the Counsel, do we have a letter?

Mr. CHERTOFF. I don't think there is a letter, Senator. I think it was an oral question.

Senator BOND. I have talked to Congresswoman Meyers and the chief of her staff today. They seem to recollect it was an oral communication. Did they ask specifically, had you reviewed the Capital Management file?

Mr. BOWLES. I'm sorry. I don't remember, sir.

Senator BOND. You did either draft or edit this letter to make sure it was fully accurate?

Mr. BOWLES. I edited it. That's correct, sir.

Senator BOND. At the time you did that, you knew that you had received a briefing on the draft indictment of Mr. Hale. You had received that memorandum, had you not?

Mr. BOWLES. Senator Bond, just to be clear, these are the things I do remember: I remember being briefed on May 15. I remember a discussion with Marty Teckler in late September. In between those two, I have been shown in my deposition two memorandums that were sent to me, one is one or two pages and the other is about the same. I don't question those were sent to me; I simply do not remember receiving them in light of everything else I got.

That is the extent of it. Then I remember a discussion with the General Counsel in November. That's all I remember.

Senator BOND. Do you remember you were told to give a heads-up to the White House?

Mr. BOWLES. That was the discussion with Mr. Teckler in September, yes.

Senator BOND. That was the only time anybody had told you to give a heads-up to the White House because you had never heard that term before?

Mr. BOWLES. I had never heard that term used in my life before that. I didn't even know what it meant.

Senator BOND. You also found that Mr. Spotila had turned over documents to the White House; is that correct?

Mr. BOWLES. After those documents were sent to the White House, Mr. Spotila informed me of that and I immediately said look, I don't know if this is right or wrong, good or bad, up or down, but you better check with somebody with the Justice Department to see if it's OK. To the best of my knowledge, he readily agreed to do so and did that, and the documents were returned.

Senator BOND. I find it difficult to square that handling of the Capital Management Services case with your statement that Capital Management has been treated in the same manner as all such other cases. Were there any other cases where there was a heads-up to the White House and documents turned over to the White House?

Mr. BOWLES. Senator Bond, I don't ever remember giving the White House a heads-up, number one. Number two, I believe this was handled appropriately in all ways. We could not have cooperated more in the investigation into this or the prosecution of this matter.

I think Mr. Foren did a superior job in managing this transaction and I think we cooperated with all of the legal authorities and the investigating authorities who were looking into it. I don't know how we could have done any more.

Senator BOND. When you stated that you have never reviewed the Capital Management file, you knew at the time that you had had extensive briefings, you had reviewed the indictment, hadn't you?

Mr. BOWLES. No, sir, that is not correct. I do not believe I would call what I had had extensive briefings. I remember the May briefing, and I remember the discussion with Mr. Teckler. I had been shown two small memorandums which were sent. I think I had been briefed in a manner that was appropriate for someone in my position.

Senator BOND. The statement, "I have never reviewed the Capital Management file," in my view would seem to preclude even the kind of information that you now recall having received.

Mr. BOWLES. I apologize for that. It certainly wasn't intended to.

Senator BOND. Mr. Foren, did you review this letter of April 11, 1994, which Mr. Bowles sent to Congresswoman Meyers?

Mr. FOREN. No, I did not.

Senator BOND. In light of your experiences in this case, do you believe, had you seen that letter, it would have been fair to say that Capital Management has been treated in the same manner as all such other cases?

Mr. FOREN. From my perspective, that is true.

Senator BOND. But not from the perspective of the other matters which have gone on?

Mr. FOREN. The comment is made, "briefed the White House." I don't know of any other case that fits that description, but from a

program management perspective, it was treated just like any other case.

Senator BOND. As far as reviewing the Capital Management file, you provided Mr. Bowles the full information on the Capital Management case even though you did not sit down and go through the file paper by paper with him; is that correct?

Mr. FOREN. Right, that is true. I didn't go through the file myself and I felt that the information that he was provided was appropriate for somebody of Erskine's position.

Senator BOND. Thank you, Mr. Foren.

I see my time is up, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Foren, how long were those memos you sent to Mr. Bowles over the summer?

Mr. FOREN. How long were they?

Senator SARBANES. Yes.

Mr. FOREN. A couple of pages.

Senator SARBANES. Each was a couple of pages?

Mr. FOREN. Yes.

Senator SARBANES. The one in May was a couple of pages; right?

Mr. FOREN. Yes. The one on the 19th may have been three pages.

Senator SARBANES. Mr. Bowles, I don't think you ought to apologize for making the statement that you never reviewed the Capital Management file. It seems clear to me that you didn't review the Capital Management file.

Mr. BOWLES. I wasn't apologizing for making the statement. I believe the statement was correct. What I was apologizing to Senator Bond for was if it misled him in any way, shape, form, or fashion, that certainly was not my effort at any time in this whole matter.

Senator SARBANES. I accept that. I think that's correct. I think this is an accurate statement, and I don't think an effort should be made to turn it into anything else.

It seems to me you got, in effect, very summary briefings about Capital Management, and if there is any suggestion that you were into the file and heavily into the case, I think that's completely wrong. Isn't that the case, you weren't heavily into this case?

Mr. BOWLES. No, sir, I was not.

Senator SARBANES. Did you perceive him to be heavily into the case, Mr. Foren?

Mr. FOREN. No, I did not.

Mr. BEN-VENISTE. Indeed, Mr. Foren, if I understand your testimony, the briefings that you gave, to the extent they were briefings, and the material that you provided were initiated by you and not at the request of Mr. Bowles?

Mr. FOREN. That is correct. The only one that may have been initiated at his request was the two-page outline that I provided on May 5.

Mr. BEN-VENISTE. But other than those two pages, everything else that you have testified about in terms of your communication with Mr. Bowles on these subjects was initiated by you?

Mr. FOREN. That's true.

Mr. BEN-VENISTE. And appropriately so from your point of view.

Mr. FOREN. That's true.

Mr. BEN-VENISTE. I have nothing further.

Senator SARBANES. OK. Mr. Chairman.

The CHAIRMAN. Let me ask you something quickly. Tell me about the draft indictment. Why did you make that available, Mr. Foren? What was your thinking behind that?

Mr. FOREN. It was a document that I attached to the memorandum that went up. It was just a piece of information I felt was appropriate for him to be aware of.

The CHAIRMAN. Had you ever done that before?

Mr. FOREN. I am not sure that I had draft indictments. Indictments come to my attention on particular cases.

The CHAIRMAN. How did that particular draft indictment come to your attention?

Mr. FOREN. It would have been provided to me by my Deputy, Ned Shepperson.

The CHAIRMAN. Mr. Shepperson, had you ever sent a draft indictment to Mr. Foren or to any other Deputy of the SBA?

Mr. SHEPPERSON. I believe this is the first time that I had ever received a draft indictment in this form, and I have noted on the top here that it was sent to me—or sent to us—I'm not sure if it came to me or if it came to one of the staff, but I wrote on the top "received from the Assistant U.S. Attorney, 5:30 p.m., August 5, 1993."

The CHAIRMAN. So there had never been an occasion that you were aware of or at least you had never received a draft indictment from an Assistant U.S. Attorney?

Mr. SHEPPERSON. That's correct.

The CHAIRMAN. This was the first time?

Mr. SHEPPERSON. Yes.

The CHAIRMAN. This is unusual?

Mr. SHEPPERSON. Very unusual.

The CHAIRMAN. Therefore, you get this indictment, then send it over to Mr. Foren, your boss——

Mr. SHEPPERSON. That's correct.

The CHAIRMAN. —because this was unusual?

Mr. SHEPPERSON. That's correct.

The CHAIRMAN. All right. Do you know who the Assistant U.S. Attorney was?

Mr. SHEPPERSON. I believe it was a man by the name of Fletcher. I think his name is on——

The CHAIRMAN. Had he communicated with you earlier or spoken to you with respect to this?

Mr. SHEPPERSON. I had not spoken to him, but both members of the Office of General Counsel—I believe Mark Stephens' name was mentioned—had spoken to him, as had Mr. Newell of our staff. He had been in contact with him requesting information following the referral, and the information started to flow together with the FBI investigation. He had contacted us requesting some additional information which the staff promptly provided.

The CHAIRMAN. That's not unusual.

Mr. SHEPPERSON. No.

The CHAIRMAN. Sure, but what you are saying is this is the first time you were ever sent a draft indictment. Was a memo attached to the draft indictment?

Mr. SHEPPERSON. I believe I received it in the evening and I just took it over and gave it to Mr. Foren who said we need to pass this on up the line and let people know. So that's what we did, so that, again, no one would be surprised when this took place.

The CHAIRMAN. Mr. Stephanopoulos spoke to you with respect to the program, the SBIC and its effectiveness?

Mr. SHEPPERSON. He didn't speak to me. He had spoken to Mr. Stanley, who was the Associate Deputy Administrator.

The CHAIRMAN. Mr. Stanley reported this to you?

Mr. SHEPPERSON. As I recall, it was either discussed in a Monday morning staff meeting or one of the 8:15 staff meetings we had every day.

The CHAIRMAN. Mr. Foren, do you recall that?

Mr. FOREN. I recall the discussion.

The CHAIRMAN. Let me ask you this. You were advised by Mr. Stanley—and if I phrase this the wrong way, let me know—that the Administration basically was interested in this program because it had proven to be effective in Arkansas? Is that a fair summary?

Mr. FOREN. What I recall was that 2 weeks after the election, Mitchell Stanley came to my office and said he had just received a call from George Stephanopoulos wanting to know about the SBIC program and how it was being managed, and he wanted to know about its current manager.

The CHAIRMAN. Mr. Shepperson recalls something about it being an effective program in Arkansas. Do you recall anything about that?

Mr. FOREN. I don't recall.

The CHAIRMAN. Mr. Shepperson, you recall that?

Mr. SHEPPERSON. That's my recollection.

The CHAIRMAN. OK. That's your recollection. Mr. Foren, just one other question. Do you know how many SBIC's there were in Arkansas?

Mr. FOREN. There were three or four. Several of them had been transferred to liquidation. I don't know the current status, but I know most of them were transferred to liquidation.

The CHAIRMAN. Do you mean, when you say transferred to liquidation——

Mr. FOREN. They defaulted on their securities or violated the regulations, and we foreclosed collateral——

The CHAIRMAN. So they were no longer operating?

Mr. FOREN. That's right. There may be one, but no more than one.

The CHAIRMAN. How many were there in 1992?

Mr. FOREN. There would have been a couple.

The CHAIRMAN. A couple. OK. Thank you very much.

Senator Bond.

Senator BOND. Thank you, Mr. Chairman. I just wanted to make a point. A distinguished colleague from Maryland disagreed with my interpretation of the letter of April 11 where Mr. Bowles said that the statement "I have never reviewed the Capital Management file" is true and accurate. I'm reminded of the story of two men lost in a balloon, in a fog, who come down near to the earth and ask a man on the ground where they are. He replies you're up

in a balloon. One of the men in the balloon turns to the other and says that man must be a lawyer, and the other asks how can you tell? He said because the statement was absolutely true and totally worthless.

I think the problem with this letter that I see, Mr. Chairman, is that the statement "I have never reviewed the Capital Management file" tends to suggest a lack of involvement that is not consistent with the information we've received. I'd like to ask Mr. Foren just a couple of questions for use later on, apart from this.

You stated in your deposition that, I believe it was June 14, 1993, you received a call from the FBI about Madison Guaranty. Do you recall that?

Mr. FOREN. Our staff did. The FBI agent assigned to the case, and I don't recall his name, called——

Senator BOND. Would that be David Reign?

Mr. FOREN. It could well have been. The FBI agent assigned to the case called Joe Newell, who's the Director of Operations or Investment, depending on when it was, and asked for specific information relative to Capital Management.

Senator BOND. Do you know what transactions the FBI was looking into at the time?

Mr. FOREN. I don't know the specific transactions.

Senator BOND. Do you know who might have been the subject of inquiry in that?

Mr. FOREN. No, I don't, although I do recall that as a result of the discussions between he and my staff, I was informed that he was very pleased to get the Capital Management case because he said "it provides missing pieces to the puzzle in the Madison Guaranty case." So they must have been looking at the 1986 transactions.

Senator BOND. There's discussion about the fraudulent activities of Judge Hale earlier on, but is it not true, Mr. Foren, that one could argue that the beneficiaries of these fraudulent transactions, the shuffling of assets to cover up the nonperforming nature of the loans, were, in fact, the borrowers themselves? Is that not a fair assessment?

Mr. FOREN. You're assuming that these are arm's-length transactions. If they're arm's-length transactions, then you would have to co-opt the borrowers and I think in many cases you'll find there was really no small business concern there, that these were merely paper transactions. In one case there was a legitimate small business concern involved. Supposedly, the check was cut and he was going to get his $300,000, but then the money was drawn back and he never really got the money. The loan remained on the books as a loan, reported to us as a loan in financing, and the borrower never really did get the money.

Senator BOND. When there's discussions of the crooked judge, it takes two to tango, there was more than one crooked person in the scheme?

Mr. FOREN. Absolutely, it would appear.

Senator BOND. Who would those other people be that would appear to be part of that scheme?

Mr. FOREN. I don't have all of that knowledge, but it would appear some of the other participants——

Senator BOND. The borrowers?

Mr. FOREN. Yes, Stephen Smith, who has pled guilty. He had a communications company. He pled guilty to false statements to the Government.

Senator BOND. Mr. McDougal——

Mr. FOREN. Others have done the same thing.

Senator BOND. These loans were being made to people like Mr. McDougal and——

Mr. FOREN. Jim Guy Tucker.

Senator BOND. —Jim Guy Tucker?

Mr. FOREN. Right.

Senator BOND. Mr. Bowles, you commended Mr. Foren but he was reassigned. Why was that?

Mr. BOWLES. I think there were a couple of reasons why he was reassigned. I always felt Wayne's principal strength was in project management. Wayne had done what I considered to be a phenomenal job on developing the new participating preferred security at the SBIC program, which has truly revolutionized that program and made it work because now, as you know, Senator Bond, you no longer have a mismatch of sources and uses of funds.

That was an enormous step. That, I believe, combined with the 50 percent reduction in the capital gains tax for investments and new start-up small businesses that got through the last session of Congress, I believe those two things combined can really do an awful lot to help generate the venture capital that small businesses need. He did a great job in developing that program. After he was reassigned—was it the export revolving line of credit or the working capital line of credit?

Mr. FOREN. Export, it's one and the same.

Mr. BOWLES. We had a working capital line of credit program at the SBA that simply just didn't work. It was, as you, I think, know, Senator Bond, it was a term loan disguised as a revolving credit, and I needed someone to take that program and to really make it work. Wayne had the kind of ability to work through the bureaucratic structure—you have to here in town—to make a program that really could help the small business owners.

So I felt that was where his best strengths were. I think there were some in the agencies that felt he had other management shortcomings. I don't remember now totally what they were, but I think he went before a review committee, and they decided the best thing to do was to transfer him over here.

Senator BOND. Mr. Chairman, I see my time has expired.

The CHAIRMAN. I'll give you additional time with the consent of the Minority if you're going to finish it up.

Senator BOND. I just wondered if anyone wishes to add any clarification to that.

The CHAIRMAN. I guess he's asking you, Mr. Foren, if you would like to add anything to that?

Mr. FOREN. I recall the circumstances a little different than that. While I certainly do appreciate Erskine's commendation relative to the programs and the changes that were made, an event occurred in October where there was, I guess, a difference of opinion as to a specific case, and I was reassigned.

The CHAIRMAN. A specific case?

Mr. FOREN. A specific case, yes.

Mr. BOWLES. I agree, that was another one of the matters that came up.

The CHAIRMAN. I don't——

Senator BOND. Mr. Chairman, it's an area that is tangential. I think there are some points to be made there but not in the context of this hearing, and I would just say I believe Mr. Foren has been an outstanding servant in the Small Business Administration. We're sorry to have lost him, and I think he has done a good job throughout.

Mr. FOREN. Thank you.

The CHAIRMAN. I think he's been an excellent witness as well, and I want to commend him for his services. I believe that Mr. Chertoff has several questions. I would go to Senator Sarbanes, but let me suggest that we let Mr. Chertoff ask his several questions and then, if you feel it's necessary, ask any others just in the interest of moving the process along.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman. I just have a couple of questions.

Mr. Bowles, just on the issue of when you decided you would recuse yourself at least informally, is it your testimony that, putting aside this health care matter, it was the understanding that the President's name had been brought into this that caused you to pull the trigger on recusal?

Mr. BOWLES. There were two things, and they were both of, I would say, almost equal importance; the health care matter and the fact that these allegations were in the newspaper that I read. I just didn't want to give even the perception of impropriety. I thought it was the right thing for me to do.

Mr. CHERTOFF. The allegations in the newspaper came out in September 1993, around the time that Mr. Hale was indicted. You recused yourself in November, 2 months later.

Mr. BOWLES. Mr. Chertoff, the first newspaper articles I remember seeing were in November, I believe. I could be wrong about that, but that's the first ones I remember.

Mr. CHERTOFF. Now, Mr. Foren, I just want to ask you because you were the other person involved in discussing the Capital Management case with Mr. Bowles, and this goes back to the letter that Senator Bond talked about to a Congresswoman. Specifically that line where Mr. Bowles indicates or volunteers that he has not reviewed the file.

Would you agree with me, Mr. Foren, that although you had not physically provided him with the file for review, he had been fully briefed and that although he literally did not review the file, as a practical matter, he was knowledgeable about what was in the file?

Mr. FOREN. Of the issues that were on the table before us, I believe so.

Mr. CHERTOFF. I have nothing further, Mr. Chairman.

The CHAIRMAN. I want to thank the panel——

Senator SARBANES. Mr. Chairman, I think the record ought to reflect the fact that while there was an article apparently in Arkansas in September about a judge expects to be indicted in SBA loans, the articles that really talked about the alleged connections,

which Mr. Bowles reacted to, appeared on November 2 in The Washington Post, The New York Times, and perhaps elsewhere. Those are the only ones I have here before me, and those were very extended discussions with Judge Hale, much of it, I think, stemming off of Hale's talking with newspaper reporters, as I understand it, but, in any event, the level of visibility was dramatically different between the September instance and the November instances.

The CHAIRMAN. I want to thank the panel. Mr. Foren, Mr. Bowles, Mr. Shepperson, thank you. We will at this time swear in the witnesses in the interest of time for the second panel. I'd ask them to step forth. Mr. Lindsey, Mr. Eggleston and Mr. Spotila.

Gentlemen, please rise for purposes of taking the oath.

[Whereupon, Bruce Lindsey, Neil Eggleston, and John Spotila, accompanied by Martin Teckler, were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. At this time the Committee would be pleased to receive any statements that you might have.

Mr. Lindsey.

SWORN TESTIMONY OF BRUCE R. LINDSEY
ASSISTANT TO THE PRESIDENT
DEPUTY WHITE HOUSE COUNSEL, SENIOR ADVISOR
AND DIRECTOR OF PRESIDENTIAL PERSONNEL

Mr. LINDSEY. Mr. Chairman, I do not have a formal statement, but my name is Bruce Lindsey. I'm Assistant to the President and Deputy White House Counsel. I appeared before this Committee August 8, 1995, in connection with the previous phase of its investigation.

It is my understanding that I've been called to testify today in connection with the Committee's investigation of what has been described generally as the Washington phase of this investigation.

I previously appeared before the Senate Banking Committee on August 4, 1994, to answer questions on that subject. I've had my deposition taken at some length by the Committee on the subject on three occasions, on July 21, 1994, on November 3, 1995, and again on November 21, 1995. To the extent that there are questions that I've not previously been asked or for which it is believed my answers require clarification, I will be happy to provide the Committee with any additional information. Thank you.

The CHAIRMAN. Thank you, Mr. Lindsey.

Mr. Eggleston, do you have a statement you would like to make?

SWORN TESTIMONY OF NEIL EGGLESTON
PARTNER, HOWRY & SIMON
FORMER ASSOCIATE COUNSEL TO THE PRESIDENT

Mr. EGGLESTON. I do, Mr. Chairman, thank you. My name is Neil Eggleston. From September 1993 to September 1994 I was an Associate Counsel to the President. I'm currently an attorney in private practice here in Washington, DC.

I understand that I've been asked to attend this hearing today to talk about my involvement with the Small Business Administration during one week in November 1993. These events took place not long after I began working at the White House.

Let me explain what occurred to the best of my recollection. In early November 1993, Bernard Nussbaum, who was then Counsel to the President, directed my attention to a newspaper article reporting that the House of Representatives Small Business Committee had requested a report from the SBA on the activities of Capital Management Services, Inc. He asked me to follow up on the news report and determine what response the SBA had given to that Committee request.

The day after the report was due to the Congressional Committee, I called the Office of Legislative Affairs at the SBA to inquire if anything had been submitted. I received a call back from John Spotila, General Counsel of the SBA. I had never previously heard of or met Mr. Spotila.

I asked him whether the SBA had made a report and whether it would be appropriate for the SBA to provide the White House with a copy of whatever had been submitted to Congress. I did not discuss with him any information beyond that which had been submitted to the Congressional Committee. In that call or a subsequent call, Mr. Spotila told me that he saw no prohibition against the SBA providing the White House with the information that the SBA had already given to Congress. He then faxed me the short letter that Administrator Bowles had written to Chairman LaFalce. He told me that Administrator Bowles' letter would be released later that day in the form of a press release, and I believe that it was. The letter from Administrator Bowles to Chairman LaFalce referred to certain background documents that had also been made available to the Congressional Committee.

I called Mr. Spotila to ask whether it would be appropriate for the SBA to provide the White House with those documents as well. At the time I had no idea what was contained in those documents. Based on the letter to Chairman LaFalce, I assumed the documents were not sensitive. Mr. Spotila again told me that he thought the SBA could appropriately provide the White House with the documents that it had already provided to Congress.

I did not ask for nor, to my knowledge, did Mr. Spotila provide me with any documents that had not already been made available to the Congressional Committee. Within a day or two of getting these documents from Mr. Spotila, I received a call from either Mr. Spotila or another member of the Counsel's Office at the SBA. He told me that Administrator Bowles had learned that the Congressional documents had been given to the White House and asked whether the SBA should run the issue by the Department of Justice.

I was concerned that the SBA had provided me with the documents without first performing whatever checks it felt appropriate. I agreed with the SBA's plan to contact the Justice Department. If the Justice Department had a problem, I wanted the issue resolved immediately.

A day or so after that phone call, I learned that the Department of Justice had requested that the materials be returned. I did so. To my knowledge, no one at the White House saw any of the underlying documents except me. I did not think it was improper for the SBA to provide these documents to the White House. First, I only inquired about documents that, according to the press, were

being provided to Congress. I did not believe that the SBA would have provided sensitive documents to Congress about a pending criminal investigation. If I had thought that my receipt of these documents would have caused the Department of Justice a problem, I would not have asked for them. Second, I was dealing with the General Counsel of the SBA, who provided the documents to me openly and accompanied by a cover letter. In short, I asked the SBA about the propriety of obtaining the documents it had given to Congress. I obtained the documents from the General Counsel of the agency who had made a determination that providing these documents to the White House was appropriate.

When I learned that the Justice Department had a problem with the transfer of the documents, I returned them. That, Mr. Chairman, is what this matter is all about. I'm happy to respond to any questions. Thank you.

The CHAIRMAN. Thank you very much.

Mr. Spotila.

SWORN TESTIMONY OF JOHN SPOTILA
GENERAL COUNSEL, SBA, SBIC LITIGATION
ACCOMPANIED BY MARTIN TECKLER
DEPUTY GENERAL COUNSEL, SBA

Mr. SPOTILA. I do not have a statement. I am John Spotila. I have been General Counsel at the Small Business Administration since September 15, 1993. I am here to answer any questions you may have.

The CHAIRMAN. I should pronounce that name better, Mr. Spotila. There's no excuse for me.

Mr. Teckler.

Mr. TECKLER. I do not have a statement either, Mr. Chairman, but my name is Martin Teckler. I'm the Deputy General Counsel at the Small Business Administration and I've been the Deputy General Counsel there since 1984. I'm here to answer any questions you may have.

Senator SARBANES. Are you a career person, Mr. Teckler?

Mr. TECKLER. Yes, I am, Senator Sarbanes.

Senator SARBANES. How long have you been at the SBA?

Mr. TECKLER. I started at the SBA in 1973. I was with the SBA for 3 years, from 1973 to 1976. I returned to the SBA in 1978 and have been there ever since.

The CHAIRMAN. Since we are going to take some time with this panel, Senator Sarbanes and I have agreed that we would take your opening statements, swear you in, then, since we have a conference—both Republicans and Democrats have conferences—we will break, but resume at 2 p.m. sharp. We thank you. We stand in recess until 2 p.m.

[Whereupon, at 12:20 p.m., the hearing was recessed, to be reconvened at 2 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. The Committee will resume.

At this point, I'll recognize Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Lindsey, a couple of hours ago, at least I learned for the first time from one of the witnesses we heard from the Small Business Administration that 2 weeks after the election in 1992, Mr. Stephanopoulos, on behalf of the transition team, called over to the Small Business Administration and made inquiries about the program. The Small Business Investment Company program which was the program that David Hale was ultimately indicted for committing fraud against, and that Mr. Stephanopoulos, in the course of at least one contact with the SBA during that transition period expressed the strong support the Administration had for the SBIC program and talked about what a good experience they had had in Arkansas with the program. What do you know about that?

Mr. LINDSEY. Nothing. I heard it for the first time a couple of hours ago, too.

Mr. CHERTOFF. When you were back in Arkansas in 1992, did you know anybody who was involved in running a Small Business Investment Company?

Mr. LINDSEY. It turns out that I knew David Hale, but at the time I didn't know he had a Small Business Investment Company, no.

Mr. CHERTOFF. Is there anybody else you knew in Arkansas who had a Small Business Investment Company?

Mr. LINDSEY. I don't believe so, no.

Mr. CHERTOFF. Can you think of any reason why in the couple of weeks after the election in 1992 Small Business Investment Companies would have been a high item on the list of priorities for the transition?

Mr. LINDSEY. Again, I don't have any idea, no.

Mr. CHERTOFF. I beg your pardon?

Mr. LINDSEY. I have no idea.

Mr. CHERTOFF. Let me direct your attention now to September 1993, when I believe you had a meeting with Jeff Gerth of The New York Times.

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Who set up that meeting?

Mr. LINDSEY. Mr. Gerth called me.

Mr. CHERTOFF. Did he tell you he had certain information regarding allegations that could touch on the President?

Mr. LINDSEY. Again, I don't remember the conversation. I believe he indicated to me he had been to Little Rock and had interviewed David Hale.

Mr. CHERTOFF. Was that the first time you had heard that David Hale made allegations involving Bill Clinton?

Mr. LINDSEY. I believe so, yes.

Mr. CHERTOFF. Had you had a conversation before your discussion with Mr. Gerth with Bill Kennedy of the White House Counsel's Office about his earlier conversation with Mr. Hale's lawyer?

Mr. LINDSEY. I don't believe so. I think I learned about that from Gerth and then spoke to Mr. Kennedy about it.

Mr. CHERTOFF. Now, you actually met with Gerth?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Why were you the person designated to sit down and talk to Jeff Gerth about what he had learned in Little Rock?

Mr. LINDSEY. As I testified before, in 1993, because I was from Arkansas, because I went through the campaign, because I have known the President for 20 years, I was usually the person in the White House who was responsible for dealing with press inquiries involving Whitewater or any related matter.

Mr. CHERTOFF. Had there been press inquiries relating to Whitewater or any related matter before Jeff Gerth called you?

Mr. LINDSEY. Probably not. Again, I can't be accurate about that. It obviously picked up the latter part of September with the calls related to the RTC referrals.

Mr. CHERTOFF. The calls relating to the RTC referrals were at the very end of September, September 28th?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. We're now talking about September 20?

Mr. LINDSEY. Right.

Mr. CHERTOFF. Can you tell us who selected you as the point person for dealing with these allegations?

Mr. LINDSEY. I don't know the answer to that.

Mr. CHERTOFF. Now, how long did you spend with Mr. Gerth in the latter part of September 1993 talking about these allegations?

Mr. LINDSEY. Oh, basically, I think I had a single meeting with him that lasted maybe 2, 2½ hours.

Mr. CHERTOFF. Was there anybody else from the White House there with you?

Mr. LINDSEY. There were people there during part of the meeting, I believe. I think my notes reflect that maybe Mark Gearan was there and that maybe David Gergen was there during a portion of the meeting.

Mr. CHERTOFF. Then they left?

Mr. LINDSEY. I don't believe Mark left. I think David left.

Mr. CHERTOFF. Is it your recollection that Mark Gearan was there for the entire conversation?

Mr. LINDSEY. I have no recollection. My notes reflect that David Gergen, I believe, left. My notes do not reflect whether Mark stayed or didn't stay, but my notes do reflect that he was there at the beginning of the meeting.

Mr. CHERTOFF. Now, you've had an opportunity, obviously, to look at your notes in connection with your depositions here and presumably in preparation for testifying. Is it fair to say that the gist of the conversation or the discussion you had with Mr. Gerth was his laying out for you a number of facts that he had been told by Mr. Hale?

Mr. LINDSEY. Yes. He related to me his conversation that he had had with David Hale.

Mr. CHERTOFF. Is it fair to say that the gist of that conversation with Mr. Hale was Mr. Hale's statement to Mr. Gerth, and perhaps other reporters, that he had had three meetings with Bill Clinton when he was Governor of Arkansas in late 1985 or early 1986 relating to a loan for the amount of $300,000 extended by David Hale's Capital Management Company to Susan McDougal, the wife of James McDougal?

Mr. LINDSEY. I think my notes are approximately 12 pages long. That was clearly one of the items in there. I don't know if that was the main item or the gist of the discussion, but that was one of many items he discussed with me relating what David Hale had related to him.

Mr. CHERTOFF. That was the first you had heard about this?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Again, we're talking about what Mr. Gerth was telling you based on his conversation with Mr. Hale. Mr. Gerth was telling you that Mr. Hale said he had had three meetings with Mr. Clinton in which Mr. Clinton had, to some degree or another, asked him or pressed him to make a loan to Susan McDougal?

Mr. LINDSEY. That is correct.

Mr. CHERTOFF. Now, in the course of the discussion with Mr. Gerth, did Mr. Gerth also raise certain questions about a loan or a movement of money from Susan McDougal's company called Madison Marketing into Whitewater and then that virtually identical amount being turned around and used to pay out a loan or part of a loan that Bill Clinton had taken out personally?

Mr. LINDSEY. There was discussion about money. He indicated that Madison Marketing or Master Marketing—I'm still not sure which one it was—advanced money to Whitewater and that Whitewater paid a loan at the Security Bank of Paragould, I believe, which the Clintons were on, but which was a Whitewater-related loan.

Mr. CHERTOFF. When you say the Clintons were "on," you mean the Clintons were the actual borrowers on the loan?

Mr. LINDSEY. That's correct. It was a Whitewater-related loan that the Clintons took out in their own name.

Mr. CHERTOFF. Is this what Mr. Gerth told you or is this——

Mr. LINDSEY. No, that's the facts.

Mr. CHERTOFF. We'll get to that in a second. I want to separate out what you were told in this conversation and what you may have gathered——

Mr. LINDSEY. I don't have any idea what I was told in the conversation. I have notes of the conversation. Beyond what's reflected in the notes, I don't remember Jeff Gerth's words to me or my words to him. So the only records of what happened in the conversation are reflected in the notes. The only thing I remember is what's reflected in the notes.

Mr. CHERTOFF. So Mr. Gerth raises the issue of a movement of money from Madison Marketing or Master Marketing into Whitewater and then that money moves to pay out approximately $5,000 in principal and a little less than $2,500 in interest on a loan that has been taken under the name of Bill Clinton; correct?

Mr. LINDSEY. Again, I don't know. I'm looking at my notes. I don't know if he broke it down into interest and principal, but yes, it was approximately $7,500.

Mr. CHERTOFF. Now, you just offered a moment ago, you said that, although it was taken out by the Clintons personally, the loan was really for the benefit of Whitewater?

Mr. LINDSEY. Right.

Mr. CHERTOFF. Wasn't the deed for the property in question actually held by Mrs. Clinton in her own name?

Mr. LINDSEY. Yes, but this is the so-called lot 13, on which they built a trailer-type house, my understanding is, that was used as a show home to show people what it would look like if you bought a piece of property and built a home on it.

Mr. CHERTOFF. When you say "they built," who's the "they"?

Mr. LINDSEY. That Whitewater built.

Mr. CHERTOFF. Again, when you say it was a loan taken out personally by the Clintons or by Governor Clinton for the purpose of building this home for Whitewater, did you get an understanding from Mr. Gerth or from some other source why the Clintons personally would have taken a loan out to build a piece of property for the benefit of Whitewater?

Mr. LINDSEY. Again, I have no idea whether I knew that at the time. I probably didn't know that at the time. That's based on 2½ years of dealing with this. So, again, what Mr. Gerth indicated to me or what I remember that Mr. Gerth relayed to me is reflected in my notes.

Mr. CHERTOFF. Did Mr. Gerth also raise with you in this conversation on September 20 questions about whether, in fact, the Clintons had borne their fair share of the financial risk in the financial contribution to Whitewater? I can help you out there. I think it's page BL 11728.

Mr. LINDSEY. Again, there are some cryptic notes which would suggest that, yes.

Mr. CHERTOFF. So as of this point on September 20, had you previously heard that questions were being actively raised about the amount of the investment the Clintons actually put at risk in the Whitewater investment?

Mr. LINDSEY. In the Lyons report, which was put out in March 1992, we reflected that the McDougals contributed more than the Clintons did to Whitewater. I don't know that between March 1992, when we put that report out, and the September conversation that I had heard anyone question the Lyons report numbers.

Mr. CHERTOFF. So Mr. Gerth was essentially raising a question for the first time about the Lyons report numbers?

Mr. LINDSEY. Again, there is a note here that has a 2 and then some lines and it says "McD," but, again, I don't remember the conversation. It would seem to suggest that he was indicating that McDougal perhaps put up more money than the Lyons Commission report indicated.

Mr. CHERTOFF. Did Mr. Gerth indicate in the course of this discussion that Mr. Hale had made allegations against Jim Guy Tucker in connection with these fraudulent loans that he was being investigated for?

Mr. LINDSEY. Again, what's reflected in here, I believe, is that loans were made to Jim Guy Tucker. I don't know whether or not—you said "fraudulent," and I'm not sure that there's any reference to that. If you could show me which page you think it is.

Mr. CHERTOFF. If we go to page BL 11718, there's a reference in your notes that says, "fall of 1985 conversation with Jim McDougal and joint conversation with Jim McDougal and JGT," who I assume is Jim Guy Tucker?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. It says, "McDougal told them 'we have some stuff we need you to do and some friends in political family who need some help.'" That was something Mr. Gerth told you he learned from Mr. Hale?

Mr. LINDSEY. That is correct. That is what Mr. Hale told Mr. Gerth that Mr. McDougal said.

Mr. CHERTOFF. As of September 20, you now understood that there was someone out there that was making some allegations concerning transactions involving Mr. Clinton, Governor Tucker, and Jim McDougal; correct?

Mr. LINDSEY. No, I don't think so. As one entity?

Mr. CHERTOFF. That in the course of an interview or interviews with The Times, David Hale had made allegations in connection with his own activities that touched upon James McDougal, Jim Guy Tucker, and Mr. Clinton?

Mr. LINDSEY. Not as a group, but yes, individually. There are references in here to David Hale and Jim McDougal. There are references in here to David Hale and Jim Guy Tucker. There is the one reference, the reference to the three meetings related to the Susan McDougal loan, relating to David Hale and Bill Clinton.

Mr. CHERTOFF. There are several references to Bill Clinton in the course of these notes; right?

Mr. LINDSEY. Again, could be.

Mr. CHERTOFF. So you had an understanding that there's an individual out there, David Hale, who was raising allegations and issues involving Governor Tucker, as well as Mr. Clinton, as well as Mr. McDougal; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Did you then set about to collect some facts on your own in order to respond to this?

Mr. LINDSEY. Apparently, yes.

Mr. CHERTOFF. Did you pick up the phone after you were finished with your conversation with Mr. Gerth and call Jim Blair?

Mr. LINDSEY. There's a note that reflects at some point I spoke to Jim Blair about this.

Mr. CHERTOFF. Why would you have called Jim Blair in order to get information about this?

Mr. LINDSEY. I believe there are references to Jim Blair in here.

Mr. CHERTOFF. I know there's references to Jim Blair in the notes. My question is, why would you have called Jim Blair to get information about David Hale and his allegations?

Mr. LINDSEY. To the extent that they make reference to Jim Blair, I would want to know whether the portion of the discussion that involved Jim Blair was accurate as Jim Blair saw it.

Mr. CHERTOFF. You can take a look at your notes. Did Mr. Gerth raise Jim Blair in his discussion with you?

The CHAIRMAN. Who is Jim Blair?

Mr. CHERTOFF. I'll get to that in a second.

The CHAIRMAN. Mr. Lindsey, I don't believe——

Mr. LINDSEY. Excuse me, I'm sorry. At the bottom of 11728, there's a reference to Jim Blair, "Vince Foster, what happened to records, why weren't they turned over to McDougal, Jim Blair." So, clearly, he raised with me the whole issue about Jim McDougal saying that he was entitled to the corporate records back when he

bought the Clintons' interest in Whitewater and what happened to that.

Mr. CHERTOFF. Who's Jim Blair, first of all?

Mr. LINDSEY. Jim Blair is the General Counsel to Tyson Foods. He is a long-time friend of the Clintons from Arkansas. He is a lawyer——

Mr. CHERTOFF. Does he represent the Clintons as a lawyer?

Mr. LINDSEY. He at one time represented the Clintons in connection with some of the sale of the Clintons' interest in Whitewater.

Mr. CHERTOFF. Since you raised the issue here about Vince Foster, did you come to learn that during the period of time that Mr. Foster was serving as Deputy White House Counsel he had been dealing with Mr. McDougal about Mr. McDougal's need to get some tax returns filed?

Mr. LINDSEY. Again, obviously at some point, I know that in December of 1992, when the Clintons sold their interest to McDougal, they indicated they would have the tax returns prepared and forward those returns to Mr. McDougal, and that Vince Foster was involved in that decision. Now, whether I knew that at this point, I doubt it. Three years later, I cannot tell you when I became aware of that fact.

Mr. CHERTOFF. To close the loop, though, you did eventually learn that, in fact, Mr. McDougal had come to see Mr. Foster or had tried to contact Mr. Foster by telephone?

Mr. LINDSEY. No, I think I learned that when you showed me a part of his phone messages.

Mr. CHERTOFF. You didn't know that before then?

Mr. LINDSEY. I don't believe so.

Mr. CHERTOFF. Now, you call Mr. Blair at around 2:30 in the afternoon on the day you spoke to Mr. Gerth?

Mr. LINDSEY. I don't know.

Mr. CHERTOFF. I can help you out here. It says——

Mr. LINDSEY. It says 2:30. I don't know if it says on the day I spoke with Mr. Gerth.

Mr. CHERTOFF. Does it say 9/20 above that?

Mr. LINDSEY. Not on the copy you gave me. The copy you gave me just has 2:30.

Mr. CHERTOFF. When you called Mr. Blair, did you try to obtain from him information about what Mr. McDougal was going to say concerning his relations and his transactions with Mr. Hale and with President Clinton?

Mr. LINDSEY. No.

Mr. CHERTOFF. Did you ask or did you seek to obtain information from Mr. Blair about what Mr. McDougal had told his lawyer about David Hale?

Mr. LINDSEY. No.

Mr. CHERTOFF. Did Mr. Blair volunteer that information to you?

Mr. LINDSEY. Apparently, because it's reflected in the note.

Mr. CHERTOFF. The information he volunteered to you was that Mr. McDougal claimed to Mr. Heuer, his own lawyer, that David Hale had visited him and tried to get him to "fabricate" his story about BC and JGT?

Mr. LINDSEY. That's what the note reflects.

Mr. CHERTOFF. BC is Bill Clinton?

Mr. LINDSEY. Correct.
Mr. CHERTOFF. JGT is Jim Guy Tucker?
Mr. LINDSEY. Correct.
Mr. CHERTOFF. What was the story?
Mr. LINDSEY. I assume it was a story that I had just heard from Jeff Gerth, that David Hale had told Jeff Gerth.
Mr. CHERTOFF. Did you ask Mr. Blair what was the story that was——
Mr. LINDSEY. Again, I don't know. All I remember is what is reflected in these notes. I have no independent recollection of the conversation with Jim Blair.
Mr. CHERTOFF. Now, in the same conversation, did the subject come up about whether Mr. McDougal was going to be indicted?
Mr. LINDSEY. There is a reference written here, and I explained in my deposition I cannot go beyond the reference, "Heuer asked Brent Bumpers—asked whether indictment—against Hale, not McDougal." Beyond what's written there, I have no recollection of him mentioning that.
Mr. CHERTOFF. What is written there is "Heuer asked," and Heuer is Mr. McDougal's lawyer; right?
Mr. LINDSEY. Yes.
Mr. CHERTOFF. He's not Mr. Hale's lawyer?
Mr. LINDSEY. That's correct.
Mr. CHERTOFF. He asks Brent Bumpers—who is Brent Bumpers?
Mr. LINDSEY. Brent Bumpers was an Assistant U.S. Attorney.
Mr. CHERTOFF. In Little Rock?
Mr. LINDSEY. Correct.
Mr. CHERTOFF. Was it your understanding he was involved in working on this case involving David Hale?
Mr. LINDSEY. No.
Mr. CHERTOFF. Then it says, "—asked whether indictment—against Hale, not McDougal." We can put this up on the Elmo, actually, so we can follow along. Now, was Mr. Blair telling you that Mr. Bumpers had been asked who was going to be indicted and Mr. Bumpers said it's going to come against Hale but not against McDougal?
Mr. LINDSEY. I have no recollection of the conversation. The notes are here. They're written like this. I don't have any independent recollection of the conversation. I would not string all those words together and make it into a sentence because of the way I wrote it, with the dashes.
The CHAIRMAN. How about reading it and then responding to the question. Maybe that will refresh your recollection. Do you want to read it?
Mr. LINDSEY. I did read it.
The CHAIRMAN. Let's read it out loud.
Mr. LINDSEY. "Heuer asked Brent Bumpers"——
The CHAIRMAN. Please talk into the microphone.
Mr. LINDSEY. "Heuer asked Brent Bumpers—asked whether indictment—against Hale, not McD."
Mr. CHERTOFF. McD is McDougal?
Mr. LINDSEY. Correct.
Mr. CHERTOFF. This doesn't help you remember that this is part of a single sentence that you wrote down?

Mr. LINDSEY. No.

The CHAIRMAN. What do you think it is?

Mr. LINDSEY. Senator, I have no recollection of the conversation beyond what's here. The words are written down like this——

The CHAIRMAN. What do you think it means?

Mr. LINDSEY. I don't have any idea.

The CHAIRMAN. You really don't have any idea what it means?

Mr. LINDSEY. No, sir, I don't have any idea. I don't have any idea whether or not——

The CHAIRMAN. Can I tell you I think it's a little preposterous—and I haven't said that to too many witnesses—that you look at your own notes and you tell me you have no idea what they mean?

Mr. LINDSEY. Senator, I don't know why I put dashes after "ask Brent Bumpers" and after "indictment." I have no idea whether or not this is part of a 5-minute conversation and those are the only notes I wrote down or whether they're a sentence.

Mr. CHERTOFF. You take notes so you can look at them later and refer to them; right? That's the point of taking notes; correct?

Mr. LINDSEY. If you look at my top note it says, "McDougal called Heuer to tell him that Hale had been to see him—McDougal told Heuer that Hale had tried to get him to fabricate story about BC and JGT."

Mr. CHERTOFF. That seems pretty coherent; right?

Mr. LINDSEY. That's right, that's because it's a sentence.

Mr. CHERTOFF. Then you have bullet points and the third bullet point is about trying to find out whether McDougal is going to get indicted?

Mr. LINDSEY. I also have dashes in there, and I have no idea today whether the dashes meant that they were separate thoughts or whether that's one thought.

Mr. CHERTOFF. Let me refresh your memory further. Let's go to page 2 of this set of notes. Do you see in the middle of the page where it says "Fletcher Jackson"? Fletcher Jackson was another Assistant U.S. Attorney in Little Rock; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Did you know Mr. Jackson?

Mr. LINDSEY. I know who he is. I do not know him personally.

Mr. CHERTOFF. It says "in charge of case" and there's a little arrow, and it says "immunity leaked." What's that about?

Mr. LINDSEY. I have no idea.

Mr. CHERTOFF. Then the next line says "McD"—that is Mr. McDougal; right?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. "Might become target." What does that mean?

Mr. LINDSEY. That means, apparently, that McDougal might become a target of the investigation.

Mr. CHERTOFF. Did you have a discussion with Mr. Blair, the gist of which is Mr. Hale has been making allegations involving conversations he had with Mr. Clinton and Mr. McDougal, where does Mr. McDougal stand in this, is he likely to get indicted, what's he likely to say?

Mr. LINDSEY. No, sir. I believe I would have called Mr. Blair to find out what this allegation was about documents being returned, who was supposed to prepare the tax returns, and so forth. In the

course of that conversation, obviously, I took these notes, so this came up in the course of that conversation, but beyond what is reflected in the notes, I mean, this is in September 1993, I am sorry, I cannot remember anything more than what is reflected in these notes.

The CHAIRMAN. But these are things that Mr. Blair told you and that you took down in note form——

Mr. LINDSEY. That's correct.

The CHAIRMAN. —to keep. I mean——

Mr. LINDSEY. Senator, if that was a sentence over here, I would agree with you that, most likely, it was all said in one sentence, but——

The CHAIRMAN. This is all about a subject area, the conversation that Mr. McDougal had with the judge and what, if anything, took place and he's responding to you. He's talking to you about these things. Now, I find it difficult to believe that you made these notes, but you don't understand them—I mean look at the notes. If they are going to get immunity or not. Is somebody going to be a target or not. Mr. Lindsey, you take these notes contemporaneously and then you come here and you say I don't really know. You don't know what it reflected in terms of your conversation? That's what I find difficult.

Mr. LINDSEY. Senator, I'm sorry. The notes speak for themselves.

The CHAIRMAN. That's right. You said it. The notes speak for themselves and any reasonable person interpreting that you have two Assistant U.S. Attorneys down there, that you have one Assistant U.S. Attorney in charge of the case, would realize that they were telling you about what the aspects of this case were going to be. I mean, this is——

Mr. LINDSEY. First of all——

The CHAIRMAN. It is disingenuous for you to come here and to suggest that you don't recall that you were talking about that particular case and what was taking place or that Mr. Blair did not convey to you his impressions.

Mr. LINDSEY. Senator, would you like me to testify about something I don't recall?

The CHAIRMAN. Mr. Lindsey, let me suggest that your notes are pretty accurate and they refer to a case in detail and the particular people involved and the questions about whether immunity was going to be granted. If you said, Senator, I can't have total recall on everything, I would absolutely agree with you. But you would make it seem as though perhaps these aren't your notes——

Mr. LINDSEY. Senator, let me suggest to you——

The CHAIRMAN. —this matter just dropped in front of you for the first time, Mr. Lindsey. This is the first time you've heard about it. That's the way it sounds to me. You would have us believe that you didn't even know there was anything going on.

Mr. LINDSEY. Senator, at this particular time, I believe David Hale was asking for immunity, not that immunity was being granted to him.

The CHAIRMAN. I didn't say immunity was granted or not granted. We're trying to get you to recall, by looking at your notes, what the substance of the conversation was.

Mr. LINDSEY. I'm telling you I do not remember the substance of the conversation beyond what's reflected in the notes. I'm also telling you that 2 days later, David Hale, in a front-page story in The Arkansas Democrat-Gazette, indicated that he went public with our incident because he was seeking immunity and——

Mr. CHERTOFF. You weren't getting your information 2 days earlier from The Gazette. The question we're trying to find out is where is Mr. Blair getting this information that he's giving to you? Who appointed or who designated Mr. Blair to collect information about whether McDougal is going to be a target? Was he representing McDougal?

Mr. LINDSEY. I have no idea. I doubt it.

Mr. CHERTOFF. Wasn't Mr. Heuer representing McDougal?

Mr. LINDSEY. I believe so, yes.

Mr. CHERTOFF. So how did Mr. Blair assume this role of quarterbacking information collection down in Little Rock?

Mr. LINDSEY. I'm not sure that's what he was doing. I was calling him because there was a reference to whether or not we were going to provide documents to Mr. McDougal and whether or not we had done that. Now, in the course of that conversation, he had this information. I don't believe that this reflects that he was quarterbacking anything.

Mr. CHERTOFF. He's just giving information about who's going to be a target, who wants immunity. The last line of the note says "Blair heard that $300,000 had been deposited in McDougal's account. Jumped pretty high." What did that mean?

Mr. LINDSEY. I have no idea. I have no idea who jumped pretty high. I don't know——

Mr. CHERTOFF. Was Mr. Blair expressing concern to you about the fact that it looked like Mr. McDougal himself might be in very serious criminal trouble?

Mr. LINDSEY. I don't know how to say it other than what's reflected in these notes, I cannot tell you what occurred in that conversation.

Mr. CHERTOFF. Then you went out to collect more information about what was going on; correct?

Mr. LINDSEY. About other aspects of it, yes.

Mr. CHERTOFF. Did you go to collect information about this loan or this advance of money from Susan McDougal that was used to pay off the personal loan that Bill Clinton had for this piece of property, lot 13?

Mr. LINDSEY. Again, I've seen the sheet that you've shown me, which is dated—or at least the cover sheet is dated 9/23/93, which would indicate that it was in response to a question I may have asked Jim Lyons.

Mr. CHERTOFF. You asked him to send you some financial information about that transaction; right?

Mr. LINDSEY. Again, when you first showed this to me at my deposition, I didn't remember having seen it. On reflection, it appears to be something that I might have asked for in following up on the Jeff Gerth conversation.

Mr. CHERTOFF. So you were in the process after the Gerth conversation of starting to collect information about Mr. Hale's allegations and the kind of problems Mr. McDougal was having?

Mr. LINDSEY. No, that's not correct. I was trying to determine with respect to those allegations relating to the Clintons what the facts were. The allegations relating to the Clintons related to turning over documents to Mr. McDougal, they related to the Madison Marketing loan or the Master Marketing loan, and they related to the three conversations that David Hale said he had with the President.

Mr. CHERTOFF. The gist of the allegation was that Mr. Clinton was involved with Mr. McDougal and Mr. Tucker in trying to get Mr. Hale to advance small business loans to a number of these businesses; right?

Mr. LINDSEY. No, sir, that is not correct.

Mr. CHERTOFF. That's not what Mr. Gerth indicated?

Mr. LINDSEY. The only involvement that Mr. Gerth indicated the President had with any other was with respect to this one loan decision, McDougal.

Mr. CHERTOFF. For $300,000?

Mr. LINDSEY. Correct, ultimately for $300,000.

Mr. CHERTOFF. Do you know Stephen Smith?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. Was he also someone that you came to learn was another loan recipient from Mr. Hale?

Mr. LINDSEY. Mr. Gerth told me that, yes.

Mr. CHERTOFF. Did you seek to explore that with Mr. Smith?

Mr. LINDSEY. I don't think so, no.

Mr. CHERTOFF. Let me show you S 12379. Let's put it up on the video.

The CHAIRMAN. Mr. Chertoff, I'm going to ask you to finish this line with respect to this document and Mr. Smith, and then——

Mr. CHERTOFF. Now, Mr. Lindsey, do you see this document, it says "the White House" at the top?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. The one on the left, is that in your handwriting?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. The one on the right is in your handwriting as well?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. The one on the right says "ABC" at the top. Is this information you got in a discussion with ABC?

Mr. LINDSEY. Again, I have no idea. I would assume that's correct. I have no memory other than what's on that note.

Mr. CHERTOFF. On the left you have "Stephen Smith" and you have two telephone numbers. Were those Mr. Smith's numbers?

Mr. LINDSEY. I assume. I have no idea.

Mr. CHERTOFF. It says here "interviewed by Cecilia Seay SBA-Fayettville attorney." Did you understand Ms. Seay to be a contract attorney hired by the SBA to work on the Hale matter?

Mr. LINDSEY. I don't know if I knew that at the time. I know that now.

Mr. CHERTOFF. Did you have Mr. Smith's numbers here and did you have this note based on a conversation to find out what Mr. Smith had told the SBA concerning his transactions?

Mr. LINDSEY. No. Again, I don't remember speaking to Steve Smith about this. I have this note with his telephone numbers on

it, and that reference, but I don't remember having a conversation with Steve Smith.

Mr. CHERTOFF. Did someone suggest to you that you ought to call Steve Smith and give you the numbers?

Mr. LINDSEY. Could well have been.

Mr. CHERTOFF. Do you have any idea why you wrote this down?

Mr. LINDSEY. No. I have no memory of this other than what's reflected on this note. I have Steve Smith's name, two telephone numbers and the reference below it, but I don't believe I ever spoke to Steve Smith, and I don't know who would have given me the information.

Mr. CHERTOFF. Again, just to be clear, Steve Smith is one of the individuals who was a borrower from David Hale. Did you know him in Arkansas?

Mr. LINDSEY. Yes, I knew him in Arkansas.

Mr. CHERTOFF. Had he ever worked for Governor Clinton?

Mr. LINDSEY. Yes, he worked in the Governor's first term.

Mr. CHERTOFF. In what capacity?

Mr. LINDSEY. Executive Assistant or—I'm not quite sure what his title was.

Mr. CHERTOFF. Did you ever work with him?

Mr. LINDSEY. No.

Mr. CHERTOFF. Did you ever represent him?

Mr. LINDSEY. No.

Mr. CHERTOFF. Finally, and then I'll stop, but just to close this off, this series of interchanges we have been talking about up to now——

Mr. LINDSEY. I'm sorry, have I ever worked with him in any official——

Mr. CHERTOFF. Have you ever worked with him in any capacity?

Mr. LINDSEY. I've known Steve Smith. I worked with him in political campaigns.

Mr. CHERTOFF. So you were a friend of his?

Mr. LINDSEY. I'm an acquaintance of his. We don't socialize together.

Mr. CHERTOFF. If you placed a call to him, you would expect him to return the call?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. Focusing again, as I just close this line off, on this sequence of conversations between September 20 and certainly we can take it up to September 23 when we have this fax with information about the loan, having this in mind, during the last week of September, on either September 30 or October 1, you heard about RTC criminal referrals directed at Madison Guaranty and Mr. McDougal. Did you connect in your mind the information you were getting about these RTC criminal referrals, which we talked about last year, and the information you were investigating or examining that you had gotten from Mr. Gerth about Mr. Hale engaging in criminal activity with Mr. McDougal?

Mr. LINDSEY. No.

Mr. CHERTOFF. These two things had no connection in your mind?

Mr. LINDSEY. Not that I recall. By the 28th, 29th, 30th, most of what is in Jeff Gerth's notes was in the papers so I wouldn't have

had to rely upon these notes. David Hale held interviews not only with Mr. Gerth but with other people and it was widely reported.

Mr. CHERTOFF. But as of that time, as of September 30 when the RTC referral information was transmitted by Ms. Hanson to the White House through Mr. Nussbaum and then, I think, through Mr. Eggleston to you, by that time, you were already aware, were you not, from your discussions with both Mr. Gerth and Mr. Blair that there was a separate criminal investigation involving Mr. McDougal, involving Mr. Hale——

Mr. LINDSEY. No——

Mr. CHERTOFF. —which also touched the President?

Mr. LINDSEY. I knew there was a separate criminal investigation involving David Hale because David Hale, I think, had been indicted by that point.

Mr. CHERTOFF. Both of these things came in at once——

Mr. LINDSEY. I don't think I connected the two.

Mr. CHERTOFF. You didn't connect the two?

Mr. LINDSEY. I don't think so.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Lindsey, let me separate it out. A good deal of the questioning was about notes that you had jotted down at a meeting you had with Jeff Gerth; is that correct?

Mr. LINDSEY. Yes, sir.

Senator SARBANES. Gerth had talked with David Hale; is that correct?

Mr. LINDSEY. That's correct.

Senator SARBANES. Did he indicate how often or how much?

Mr. LINDSEY. I believe he indicated to me that he and a colleague held meetings with Mr. Hale over a 3-day period.

Senator SARBANES. Over a 3-day period?

Mr. LINDSEY. Correct.

Senator SARBANES. Then, in this meeting, he put to you, I take it, many of the things that Hale had told him and asked you about them; right?

Mr. LINDSEY. I'm not sure he asked me about them. He related to me what David Hale had related to him and I simply mostly took notes of what he was telling me. It was almost all new information to me and I was just simply writing it down as he said it.

Senator SARBANES. I see. Was the assumption that at the end of that you would try to find out information about these things?

Mr. LINDSEY. I think he clearly asked me about the three conversations and whether or not the President had spoken to David Hale on behalf of Susan or Jim McDougal, and I did try to determine that from the President.

Senator SARBANES. Now, after that meeting, was that when you talked with Jim Blair?

Mr. LINDSEY. Apparently I talked to him that afternoon. My note does not have a date on it. It has a time, 2:30, but if the date is 9/20 it would be the afternoon of the day I had the conversation with Jeff Gerth.

Senator SARBANES. You then took notes of your conversation with Jim Blair?

Mr. LINDSEY. Yes.

Senator SARBANES. Are those the notes that begin "McDougal called Heuer"—who's Heuer?

Mr. LINDSEY. Sam Heuer was Jim McDougal's lawyer. I don't know if he currently is or not.

Senator SARBANES. This is coming now from Jim Blair, I take it?

Mr. LINDSEY. Apparently, yes.

Senator SARBANES. "McDougal called Heuer to tell him that Hale had been to see him. McDougal told Heuer that Hale had tried to get him to fabricate a story about BC and JGT." "Hale had tried to get him to fabricate a story about"—BC is Bill Clinton?

Mr. LINDSEY. Bill Clinton.

Senator SARBANES. JGT is Jim Guy Tucker?

Mr. LINDSEY. Jim Guy Tucker.

Senator SARBANES. That was apparently related to you by Blair, at least according to this note?

Mr. LINDSEY. Apparently, yes.

Senator SARBANES. You have no independent recollection of these conversations, I take it?

Mr. LINDSEY. No, I've spoken to Jim Blair, obviously, on a number of occasions, but I don't remember this particular conversation beyond what's reflected in these notes. Again, I don't remember the conversation at all. Obviously, these notes were taken at the time and would be what I wrote down at the time.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Mr. Lindsey, did you know how many people that Mr. Gerth contacted to get some sort of comment from them with relation to what he had heard from Mr. Hale?

Mr. LINDSEY. I have no idea.

Mr. BEN-VENISTE. We have information developed in this Committee that Mr. Hale spent at least a day, maybe more, with Mr. Gerth at the suggestion of Mr. Hale's attorney, Mr. Coleman. Thereafter, since there were no restrictions on what Mr. Gerth might do with this information, he called a number of people. He called someone at the Department of Justice, Mr. Nathan, who is a Deputy to Mr. Heymann; he called the FBI office in Little Rock; he called you; and he called others to discuss what it was that Mr. Hale had told him.

Now, did you understand, either from your conversations with Mr. Gerth or through conversations with others, that Mr. Hale was struggling mightily to get some kind of a favorable deal, either immunity or no prosecution or some such thing, from the authorities who had tracked him down and caught him involved in the fraudulent activities which we have discussed here today?

Mr. LINDSEY. Yes, sir.

Mr. BEN-VENISTE. What you were doing was writing down that which Mr. Gerth told you that Mr. Hale had said; correct?

Mr. LINDSEY. That's correct.

Mr. BEN-VENISTE. Thereafter, virtually everything that Mr. Gerth told you found its way into newspaper stories, either by Mr. Gerth, The Washington Post, or The Arkansas Democrat, but all this information was out there very quickly in the public sector?

Mr. LINDSEY. Within 2 or 3 days, yes, sir.

Mr. BEN-VENISTE. Indeed, is it not the case that Mr. Hale was indicted by a Federal Grand Jury in Little Rock a matter of days after your conversation with Mr. Gerth?

Mr. LINDSEY. Yes, sir.

Mr. BEN-VENISTE. Let me turn to Mr. Eggleston. Good afternoon, sir. You have provided information by way of your opening remarks with respect to the circumstances under which you were involved in the request for information from the SBA that had been provided to a Member of Congress; is that correct, sir?

Mr. EGGLESTON. Yes, sir.

Mr. BEN-VENISTE. Could you tell us a little bit about your background, Mr. Eggleston?

Mr. EGGLESTON. I graduated from law school in 1978. I clerked for a judge in the United States Court of Appeals for the Third Circuit for a year. I clerked for Chief Justice Warren Burger from 1979 to 1980. Thereafter, I became an Assistant United States Attorney in the Southern District of New York, from 1981 until 1987. In 1987, I became Deputy Chief Counsel of the House Iran-Contra Committee. Upon leaving that a year later, I went into private practice here in Washington and went to the White House in September 1993.

Mr. BEN-VENISTE. Now, would you tell us how it came to your attention that materials relating to Mr. Hale's enterprise were furnished to a Member of Congress?

Mr. EGGLESTON. Mr. Ben-Veniste, I learned about it, I think, when Mr. Nussbaum, my supervisor, directed my attention to a newspaper story. I think that newspaper story appeared in The Washington Post on November 6, 1993, and the story indicated that Chairman LaFalce, really at the request of the Ranking Minority Member, Representative Myers, had requested the SBA to provide some sort of report on Capital Management, and I believe that newspaper story provided a due date of November 15.

Mr. BEN-VENISTE. Now, as of November 6, there had been very considerable publicity about Mr. Hale in The New York Times and The Washington Post, had there not?

Mr. EGGLESTON. I believe that's right. I've gone back in preparation for today and reviewed some of it.

Mr. BEN-VENISTE. We have identified extensive stories by Mr. Gerth and by The Washington Post on November 2, 1993, so it is likely that, among other things, these newspaper stories may have spurred Congressional interest?

Mr. EGGLESTON. I think that's accurate.

Mr. BEN-VENISTE. The materials that were in the newspaper stories, of course, tracked the same information that Mr. Gerth was disseminating in order to get reaction to the information he had collected?

Mr. EGGLESTON. Mr. Ben-Veniste, that sounds accurate. I do not think I knew at the time about the conversation with regard to Mr. Hale that Mr. Lindsey has just spoken about.

Mr. BEN-VENISTE. I understand. Now, at that point, what did you do in terms of following up on the information you had been provided?

Mr. EGGLESTON. I think that I discussed this issue with Mr. Nussbaum sometime during the week of November 8. The story ap-

peared, I believe, on Saturday, November 6. I think sometime during the week of the 8th he directed my attention to this story. As I say, the report was due to Congress on November 15. On November 16, I called to the SBA and inquired about whether the deadline had ever been met, whether the SBA had complied with the request for the report and if so, what had been produced.

Mr. BEN-VENISTE. What did you learn?

Mr. EGGLESTON. I initially called their Office of Legislative Affairs and asked them. I can't remember who I spoke to there. I then received a call back later, as I recall at least, from Mr. Spotila. Mr. Spotila, whom I indicated I did not know before—I don't think I had had any dealings with him, either in private practice or since I had been at the White House—told me late the night before, late the night of the 15th, the SBA had indeed complied with the request and had provided a report to Chairman LaFalce.

Mr. BEN-VENISTE. What did you do thereafter?

Mr. EGGLESTON. I didn't know, of course, what the report was that had been provided. I asked him whether it would be appropriate for the White House to have whatever had been provided to Congress. These were documents and information that had left the SBA and been provided to Congress and it struck me it was likely appropriate for the White House to have a copy of whatever had been provided to Congress, so I asked Mr. Spotila whether that was appropriate. Mr. Ben-Veniste, it was either in that conversation or a later conversation—I'm not sure I can identify each and every one—but there came a time, I believe during the day of the 16th, when he told me it would be appropriate to provide the White House with a copy of the report, and I believe he faxed it to me sometime during the morning of November 16.

Mr. BEN-VENISTE. Now, the report made reference to related documentation, did it not?

Mr. EGGLESTON. I seem to remember that—I think I have it in front of me—the last page or so of the report made reference to related documentation.

Mr. BEN-VENISTE. Did you make a request for that documentation?

Mr. EGGLESTON. I did. I really don't remember, sir, whether I discussed in the initial conversation with Mr. Spotila whether there was related documentation or not, but I do remember asking him whether it would be appropriate for the White House to have the related documentation as well, and I remember him saying that that would be appropriate.

Mr. BEN-VENISTE. You received that material?

Mr. LINDSEY. I did, on November 16, I believe.

Mr. BEN-VENISTE. Did there come a time when you learned that there was some concern coming from the Department of Justice with respect to what had transpired?

Mr. EGGLESTON. That's true. The first thing I learned actually—either Mr. Spotila or someone in Mr. Spotila's office had called me to tell me that Administrator Bowles had raised the issue of whether or not it was appropriate to raise the issue of whether they had checked with the Department of Justice before providing information to the White House. I believe I was told they intended to do that. I did not, frankly—and ultimately wrongly—think the Depart-

ment of Justice would have difficulty with the White House having information that had been provided to Congress. A day or two later, I think probably on Thursday the 18th or Friday the 19th, I believe I learned from Mr. Stephens, who worked for Mr. Spotila, that the Department of Justice did have a problem and would like me to return the information.

Mr. BEN-VENISTE. What did you do thereafter?

Mr. EGGLESTON. At the time, I was actually in this room at a hearing involving Mr. Halpern, who at the time had been nominated to be an official with the Department of Defense, and I spoke to Mr. Stephens. I told him that I would probably contact the Deputy's Office at the Department of Justice to inquire what the problem was and what the concern was. Under our procedures, the Deputy's Office at the Justice Department was the intake place. I wouldn't call somebody in the fraud section or whatever. When I returned to my office, I think shortly after I returned to my office, I received a call, I believe, from Mr. Nathan, who was the Deputy to Mr. Heymann, who told me—and this is the first time I had heard from the Department of Justice—that the Department of Justice wanted me to return the documents.

Mr. BEN-VENISTE. What was your reaction?

Mr. EGGLESTON. I told them I had to talk to Mr. Nussbaum. By that time, it was obvious that we would return the documents, but I had to talk to my supervisor before agreeing to do so.

Mr. BEN-VENISTE. Did you feel somewhat caught out as a result of what had transpired in the sense that you had no reason to believe that the Justice Department would have any objection to you reviewing the documents?

Mr. EGGLESTON. Mr. Ben-Veniste, when I got the documents, I assumed it was appropriate for me to have them, and I did not believe the Department of Justice would have a difficulty. When I heard, first from Mr. Stephens and then from Mr. Nathan, that indeed the Department of Justice wanted me to return them, yes, I was quite concerned, and spoke fairly quickly thereafter to Mr. Nussbaum and worked hard to get the documents back as soon as I could.

Mr. BEN-VENISTE. They were returned?

Mr. EGGLESTON. I made efforts, I think, starting Friday night, after I talked to Mr. Nussbaum, to return them. I tried to get in touch with Mr. Stephens and Mr. Spotila on Saturday, calling them at their office, and I think I identified a John Spotila who lived in Virginia. I didn't know if it was this John Spotila. I called that number and didn't get anybody. I worked on it during the day on Saturday to try to get these back, because having been advised the Department of Justice didn't want the White House to have them, I wanted to get rid of them as soon as I could. I ultimately called Mr. Stephens, who happened to be working Sunday morning. I called him at 9:15 in the morning and returned them to him midmorning on Sunday, November 21.

Mr. BEN-VENISTE. Let me ask you, having spent 6 years in the finest prosecution office in the United States and having reviewed—that's the Southern District of New York, a hometown plug, Mr. Chairman——

The CHAIRMAN. Yes.

Mr. BEN-VENISTE. —an office which is dear to my heart—did you, in your review of those documents, see anything that was particularly sensitive?

Mr. EGGLESTON. I did not. I think a number of the documents—I'm having trouble remembering exactly what they were—were public. I think one document was a receivership that had been filed in the Eastern District of Arkansas. I think the indictment of Mr. Hale was there, which was public, and there were some audit reports. I did not see any documents that I thought were particularly sensitive or that would have alerted me to the notion that the Department of Justice might have had a problem.

Mr. BEN-VENISTE. The documents were returned under what circumstances that weekend?

Mr. EGGLESTON. I drove them myself back to the SBA and gave them to Mr. Stephens.

Mr. BEN-VENISTE. That was on Sunday?

Mr. EGGLESTON. That was on Sunday morning.

Mr. BEN-VENISTE. Now, Mr. Teckler, you are a career employee?

Mr. TECKLER. Yes, I am.

Mr. BEN-VENISTE. With the SBA?

Mr. TECKLER. Correct.

Mr. BEN-VENISTE. You've had occasion to review the materials that were sent over to Mr. Eggleston, have you not?

Mr. TECKLER. Subsequent to them having been sent, I reviewed the materials, yes.

Mr. BEN-VENISTE. Those materials, on the cover letter to Congressman LaFalce, bore a legend, did they not?

Mr. TECKLER. Yes, they did.

Mr. BEN-VENISTE. What was that legend essentially?

Mr. TECKLER. It was a legend of confidentiality, which is a standard legend we attach to materials which are forwarded to Congressional Committees so that the documents will not be disseminated from the Committee to third parties.

Mr. BEN-VENISTE. That is something which you do as a regular course at the SBA, no matter what the actual sensitivity of the documents are?

Mr. TECKLER. Normally when we would furnish a report of that nature, we would attach that legend to a report which is furnished to our Oversight Committee.

Mr. BEN-VENISTE. Having had the opportunity to review the report and the attachments thereto that were turned over to Mr. Eggleston and with the benefit of hindsight, do you identify any documents that were particularly sensitive?

Mr. TECKLER. No, I think we satisfied ourselves, and I think Mr. Spotila satisfied himself, prior to having sent the documents forward that there were no sensitive documents. We certainly are satisfied to that effect afterwards.

Mr. BEN-VENISTE. Is that correct, Mr. Spotila?

Mr. SPOTILA. Yes, it is.

Mr. BEN-VENISTE. By this time, of course, Mr. Hale had been indicted by a Grand Jury in Little Rock; correct?

Mr. SPOTILA. That's correct.

Mr. BEN-VENISTE. Mr. Hale's very extensive conversations with various news reporters had all been published?

Mr. EGGLESTON. I believe that's correct.

Mr. BEN-VENISTE. With respect to the Department of Justice and their concern, we have the testimony, Mr. Chairman, of George Allen Carver, a career prosecutor in the fraud section at the Department of Justice, who was asked at page 80 of his deposition transcript by Mr. Chertoff:

Question: Did you ever learn the circumstances under which these documents were transmitted to the White House and what happened?

Mr. Carver's answer was:

Answer: My impression was it was totally innocent, and you had White House staff who were interested in tracking what was going on on the Hill for—because it looked—it concerned the White House so that when a request for documents went over to the Small Business Administration, they wanted a set of that documents and a set of those documents was prepared. We asked them for copies with handwritten notations on them and all copies.

So in Mr. Carver's opinion, quite clearly, the request that was made by you, Mr. Eggleston, was innocuous, appropriate and did not cause a problem to those people who later looked at the situation. Indeed, Mr. Nathan, who is Mr. Heymann's Deputy, testified at page 97 of his sworn deposition:

Question: Did you ever come across any evidence that might have led you to feel that there was an improper motive in the White House's request for the documents?

Mr. Nathan responded:

Answer: No. Mr. Eggleston's explanation was reasonable and sensible and I accepted it fully and had no reason to doubt it.

So as a result of the request by Congressman LaFalce, if I understand correctly, Mr. Spotila responded to your request, Mr. Eggleston. He made the documents available to you. You reviewed the documents. You found nothing particularly noteworthy about them. There was concern raised that came to your attention emanating from the Justice Department—obviously from the standpoint of appearances rather than substance. You responded promptly to that sensitivity expressed by the Department of Justice and returned the documents; correct?

Mr. EGGLESTON. That's correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Spotila, could you identify any problem that resulted, other than everybody coming here testifying about it and having taken innumerable sworn depositions in the House and Senate, but can you identify any substantive problem that resulted from the transmittal and return of the documents that we've been discussing?

Mr. SPOTILA. I am not aware of any problem that resulted.

Mr. BEN-VENISTE. Mr. Teckler, can you identify any problem, any hindrance or other obstruction to anything that the SBA, the U.S. Attorney's Office, or the Department of Justice was doing with respect to the prosecution of Mr. Hale relating to this matter resulting from the transmittal of these documents?

Mr. TECKLER. No, sir, I cannot.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Michael, do you want another round?

Mr. CHERTOFF. Thank you, Senator.

Mr. Lindsey, I'm going to resume chronologically with you in a moment, but I just want to jump in for a second on the examination we just had.

Mr. Spotila, you made a decision to send the documents over; right?

Mr. SPOTILA. Yes, I did.

Mr. CHERTOFF. After the documents were sent back at the insistence of the Department of Justice, you satisfied yourself that you hadn't done anything wrong. Is that it?

Mr. SPOTILA. If I could explain, before I sent the documents to Mr. Eggleston—actually, more accurately, delivered the documents to Mr. Eggleston——

Mr. CHERTOFF. You delivered them?

Mr. SPOTILA. I hand-delivered them.

Mr. CHERTOFF. You hand-delivered them?

Mr. SPOTILA. To Mr. Eggleston, yes.

Mr. CHERTOFF. Where?

Mr. SPOTILA. At the SBA. Let me explain. I think I can add at least a little to the account that Mr. Eggleston gave, although his account was substantially correct. When I had the first discussion with Mr. Eggleston, and I don't recall whether he called me or I called him, but it was on November 16, he indicated, as he suggested, that he was interested in whether the White House properly could receive the background materials that we had made available to the House Small Business Committee.

I spoke with Mark Stephens, on my staff, who was the career attorney, senior attorney who was handling the Capital Management case for us. He had indicated to me that all of the documents were entirely routine and nonsensitive. I had previously received guidance from Mr. Teckler that the White House was permitted to receive routine background materials of this nature in the absence of some particular reason why they would not be made available.

I made the decision that these materials, therefore, could be made available to Mr. Eggleston but I also mentioned to him that we did not want the materials disclosed to the public at this time, that the agency had not made that determination. It could be shared with other governmental agencies, including the White House, but it was not to be released to the public. He offered to come by and pick up the documents, which he did, and I gave them to him.

Mr. CHERTOFF. He offered to come by and pick up the documents?

Mr. SPOTILA. That's right.

Mr. CHERTOFF. Is there a system where one Government office can send another Government office what you've described as routine background materials?

Mr. SPOTILA. Is there a system for delivering——

Mr. CHERTOFF. It's called the mail.

Mr. SPOTILA. My understanding was because of the nature of the request, namely that Mr. Eggleston was interested in having the background materials available in the event of press coverage, that it was important that he receive them promptly and that seemed like a reasonable request.

Mr. CHERTOFF. So there was an urgency to the request?

Mr. SPOTILA. Because of the likelihood of press coverage.

Mr. CHERTOFF. Now you're telling us that this was under the press coverage exception to confidentiality, that if there's going to be a press story that might come up, you can send things over?

Mr. SPOTILA. No, I'm not saying that. I'm saying that the reference to confidentiality was meant to refer to something else. The documents were marked confidential because they were not to be disclosed to third parties, as Mr. Teckler has indicated. They were not of a nature that we would have been prohibited from making them available to other governmental agencies, including the White House.

Mr. CHERTOFF. Now, I'm holding up the documents that we've received from the SBA which constitute the attachments. Does this square with your recollection of the volume of material we're talking about?

Mr. SPOTILA. That's about the right volume of material.

Mr. CHERTOFF. What actually happened here is you initially faxed to Mr. Eggleston a copy of the press release; right?

Mr. SPOTILA. My recollection is that I faxed a copy of the press release that had been done and then the cover letter, and he had asked whether he could have the attachments.

Mr. CHERTOFF. He came over and picked them up?

Mr. SPOTILA. Yes, he offered to come over and pick them up, and that was a simple means of transmitting them.

Mr. CHERTOFF. So as not to leave us with the impression that this was treated by the Department of Justice as a routine matter, they insisted you get every piece of paper back; right?

Mr. SPOTILA. As Mr. Bowles testified earlier today, after I gave the documents to Mr. Eggleston, I spoke to Mr. Bowles later in the day and I mentioned to him that I had had this request from Mr. Eggleston and that I had made the documents available. He asked me whether we had talked to the Department of Justice about it, since we were working closely with them and coordinating with them. I said no, we had not but we would do so immediately. So I spoke with Mr. Stephens, who was our liaison with the Department. Mr. Stephens called, I believe, Mr. Carver. Mr. Carver said he would think about it for a day or so. He got back to Mr. Stephens the next day and said they would like us to get the materials back, and so we did.

Mr. CHERTOFF. In fact, they were delivered back to you on that Sunday; right?

Mr. SPOTILA. I believe they were delivered back to Mr. Stephens, as Mr. Eggleston mentioned.

Mr. CHERTOFF. Let me jump forward. Isn't it a fact, Mr. Eggleston, that as a consequence of this, the Department of Justice actually insisted that the FBI conduct investigative interviews of you and Mr. Nussbaum and others?

Mr. EGGLESTON. I know I was interviewed by the FBI.

Mr. CHERTOFF. In fact, on the occasion the FBI first came in to interview you, didn't Mr. Nussbaum insist that he be present for the interview?

Mr. EGGLESTON. I don't remember that it was Mr. Nussbaum specifically. I remember that there was an interest in having someone else—some other attorney sit in on the interview. Initially, I

think, it was going to be someone from the Counsel's Office. It might have been Mr. Nussbaum. Ultimately, it was an outside attorney.

Mr. CHERTOFF. The reason it was an outside attorney is the Department of Justice pulled back the interviewers because they refused to have you interviewed in the presence of someone else from the White House Counsel's Office; isn't that correct?

Mr. EGGLESTON. They called somebody and came back and said that they did not want someone else from the White House Counsel's Office to sit in. I said fine, like any other American, I don't want to sit alone in an FBI interview, but I'm happy to be interviewed. Let me see if I can find someone else to sit in and as soon as I can arrange that we'll have the interview, and that's exactly what happened.

Mr. CHERTOFF. Their problem wasn't with you having a lawyer. Their problem was with having Mr. Nussbaum, who was another person to be interviewed, in the room with you; right?

Mr. EGGLESTON. My recollection, Mr. Chertoff, is they had a problem with anybody from the White House Counsel's Office sitting in.

Mr. CHERTOFF. From the office in which you and Mr. Nussbaum were working?

Mr. EGGLESTON. Correct.

Mr. CHERTOFF. Since Mr. Ben-Veniste read into the record a portion of the deposition from Mr. Carver, let me put up TTK 157 on the Elmo, which is a note dated 1/19/93, approximately a month or two after these events, taken by Allen Carver apparently of a conversation with Jerry McDowell that reads as follows:

As far as DOJ is concerned, when we heard what SBA did, we tried to undo the damage. I've got to believe the White House Counsel have done an incredibly stupid thing. What kind of independence IG interviews to follow.

Did you ever hear this sentiment expressed to you from the Department of Justice, Mr. Spotila?

Mr. SPOTILA. No, I did not.

Mr. CHERTOFF. So your impression was the Department of Justice thought this was just a pay-it-no-mind issue?

Mr. SPOTILA. The following Wednesday, I think that was November 24, Don Mackay, who was the attorney who I think had just recently been appointed to handle the investigation, came over to the SBA with two of his staff members and an FBI agent. They were actually coming over to review some other materials, but while they were there, they asked if they could meet with myself, Mr. Teckler and Mr. Stephens. We spent several hours that afternoon and had gone over in complete detail everything that had happened, the full background. The FBI agent was present and took notes. At the end of that discussion, because this honestly was the first that I had any indication that the Justice Department had any concern or question about it at all, I asked Mr. Mackay whether he thought we had done anything wrong and my recollection is that he said to me no, but they were concerned about the perception and wanted to get all the facts down and that's the last, candidly, I ever heard about it until just now.

Mr. CHERTOFF. Mr. Eggleston, did you make a copy of one of the documents in the file?

Mr. EGGLESTON. I have some recollection of that.

Mr. CHERTOFF. Did you shred that document?

Mr. EGGLESTON. I put it in my burn bag.

Mr. CHERTOFF. What was the document you copied?

Mr. EGGLESTON. I don't recall.

Mr. CHERTOFF. You were asked some questions by Mr. Ben-Veniste about the significance of this file. The file contained essentially the investigative work product of the Small Business Administration as it related to the Hale case; correct?

Mr. EGGLESTON. I don't know that.

Mr. CHERTOFF. Is it you don't know or you don't recall it?

Mr. EGGLESTON. No, I don't know that at all to be true. It was a bunch of audit reports and the like. I think, in fact, it was not my impression at all that it was the investigative background that led to his indictment. That was not my impression upon reading it.

Mr. CHERTOFF. It contained audit reports; correct? You just said so; right?

Mr. EGGLESTON. Sure.

Mr. CHERTOFF. Examination reports?

Mr. EGGLESTON. Correct.

Mr. CHERTOFF. Reports about loans that had been made which had been drawn into question?

Mr. EGGLESTON. Yes.

Mr. CHERTOFF. Again, drawing on your experience as a former prosecutor, which Mr. Ben-Veniste invoked earlier, if you're representing someone who's being accused by another individual, let's say by David Hale, the person who's under that accusation has a strong interest in collecting information about Mr. Hale and Mr. Hale's background that might be used to attack Mr. Hale's credibility. Is that, drawing on your experience, a fair statement of what a lawyer representing a subject of accusation from Mr. Hale might want to do?

Mr. EGGLESTON. I was not representing the President in any matter, and that is not the reason I was doing it, and I did not disseminate that information to anybody else who might have had that kind of an interest——

Mr. CHERTOFF. I'm just asking you to draw on the experience that you drew on for Mr. Ben-Veniste in evaluating the significance of this material as it leaves the agency and goes out someplace else. Would you agree with me that is material that defense attorneys routinely press the courts and press the agencies to get with respect to people who are cooperating witnesses and they are constantly being resisted by the agencies and the courts when they want that information; correct?

Mr. EGGLESTON. I did not regard that information that was in that file as at all relevant to anything that was going on with regard to the President. So as to the question you're asking me, the answer, Mr. Chertoff, is no.

Mr. CHERTOFF. If the information in the file wasn't relevant to anything going on with the President, what was the business of the White House Counsel's Office in finding out what was in the file on David Hale?

Mr. EGGLESTON. Mr. Chertoff, I didn't know when I got it what was going to be in it. I had no idea what was going to be in the

file when I got it. The first thing I did when I looked at it was to look through it to see whether there was a reference to the President or First Lady because if there were, the likelihood of a press leak or some sort of disclosure would be substantially higher. It is background information about Capital Management Services, Inc. which I found to be not of any particular interest. I looked at the documents very quickly and put them aside.

Mr. CHERTOFF. Is this the same theory, that there might be a press story, that was also in the mind of Mr. Nussbaum and others in the White House Counsel's Office during the very same period of time when you were having meetings with Treasury personnel concerning the RTC referrals?

Mr. EGGLESTON. I can't tell you what was in the mind of Mr. Nussbaum. The reason I felt comfortable asking for these documents is that they had been provided outside of the SBA to a Congressional Oversight Committee, not a Special Committee designed to investigate anything, such as this one might be, and I thought the fact that they had been disclosed outside of the SBA meant that they were not particularly sensitive. They were not relevant to an ongoing criminal investigation because my experience is that had they been, the Department of Justice would have intervened and prevented them from being provided.

Mr. CHERTOFF. Mr. Spotila, you didn't check with the Department of Justice before you sent them over, did you?

Mr. SPOTILA. I spoke with Mr. Stephens, who was our career attorney handling the matter, who knew the materials thoroughly and who, in fact, had assembled the materials for the House Committee and he had indicated to me that these materials were all routine. These were not the products of an investigation of Capital Management. They were not the products of a criminal investigation of anyone. They did not contain any information from the Department of Justice or the FBI. They did not relate to Madison Guaranty or the White House. They were routine background materials. That's the assurance he gave me.

Mr. CHERTOFF. This was not, again, an assurance from the Department of Justice; right?

Mr. SPOTILA. I did not speak to the Department of Justice before we transmitted the materials.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. At this point in time I'm going to ask the witnesses, and obviously you have a right and you have a duty to give a full explanation as it relates to answers, but they're not trick questions and when the question is asked—and it's not a trick question—did you check with the so-and-so prior to—and I won't repeat the exact question—and either you did or you didn't, I'm going to ask that you try to curtail it because we'll be here for a long time and we'll eventually get an answer. So I ask that of all the witnesses. That's all. All right?

Senator Sarbanes.

Senator SARBANES. Mr. Eggleston, when did you get in touch with the SBA with respect to getting the report?

Mr. EGGLESTON. I believe I called on November 16, 1993, which was the day after the news report indicated that it was due.

Senator SARBANES. Due to Congress?

Mr. EGGLESTON. Yes, sir.

Senator SARBANES. So that was after the report had gone to Congress?

Mr. EGGLESTON. Yes.

Senator SARBANES. Is that correct? Had it gone to Congress, Mr. Spotila?

Mr. SPOTILA. It had gone to Congress the night before, the 15th.

Senator SARBANES. You called the next day and said I understand you've provided this report to Congress, can we have a copy of the report; is that correct?

Mr. EGGLESTON. Essentially, Senator. As of that moment, I didn't know whether they had actually even given anything to Congress in response to the request, so my first question was was anything provided and if it was, would it be appropriate for the White House to have a copy, yes, sir.

Senator SARBANES. So they sent the report over to you?

Mr. EGGLESTON. Yes.

Senator SARBANES. Then, in reading the report, you noticed that it made reference to attachments?

Mr. EGGLESTON. Yes, sir.

Senator SARBANES. The report that went to Congress?

Mr. EGGLESTON. That's my recollection.

Senator SARBANES. So you then inquired whether you could also see the attachments?

Mr. EGGLESTON. Yes, sir.

Senator SARBANES. The attachments had also gone to Congress, Mr. Spotila?

Mr. SPOTILA. Yes, they did, Senator.

Senator SARBANES. Was anything sent to Mr. Eggleston that had not previously been sent to Congress?

Mr. SPOTILA. No.

Senator SARBANES. What was provided to him was the material that had gone to the Congressional Committee on the House side?

Mr. SPOTILA. Yes.

Senator SARBANES. Now, you were interested in that because you had some concern that once the material had been provided to the Committee, it might find its way into the press, you might be called upon to respond to that?

Mr. EGGLESTON. Yes.

Senator SARBANES. Once the material was sent over to Mr. Eggleston, Mr. Spotila, Mr. Bowles then became aware that it had been sent; is that right?

Mr. SPOTILA. I went to Mr. Bowles and I told him that I made these materials available to the White House.

Senator SARBANES. Who was it that you had consulted with in your Counsel's Office, the career person?

Mr. SPOTILA. I don't recall specifically, but I probably would have said to him that I had talked to Mark Stephens and perhaps Marty Teckler.

Senator SARBANES. He thought you should check it out further; is that correct?

Mr. SPOTILA. That's right. He thought that even if it was an excess of caution, we ought to talk to the Department of Justice, and so I agreed.

Senator SARBANES. They then indicated that the attachments ought to come back; right?

Mr. SPOTILA. At the time the Department of Justice had not seen the materials either. They really weren't sure what the materials were. It's certainly our impression that they wanted to be careful about it. They thought it was a better idea to get the materials back, so we immediately called Mr. Eggleston—I had Mr. Stephens do that—to get the materials back.

Senator SARBANES. Was the report turned into a press release at some point?

Mr. SPOTILA. The transmittal letter, which was a summary of three or four pages, was substantially converted into a press release, I believe it was by Mr. Stephens, but I wasn't involved in doing that directly.

Senator SARBANES. When was that done?

Mr. SPOTILA. That was done on November 15, the day before.

Senator SARBANES. That was released to the press?

Mr. SPOTILA. I believe it was released to the press. Certainly as of the 16th it had been released.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I want to follow up on this point that Senator Sarbanes elicited because I think that is critical to understanding the reaction of the Justice Department.

It is your testimony, Mr. Spotila, that at the time the Justice Department expressed their concern over the transmittal, the Justice Department hadn't seen what was in the materials?

Mr. SPOTILA. That is my understanding. Again, Mr. Stephens had the conversations with people at the Department of Justice, so I'm relaying what he relayed to me.

Mr. BEN-VENISTE. So their concern has to be looked at in the context of them not knowing what the materials comprised; is that right?

Mr. SPOTILA. That is correct.

Mr. BEN-VENISTE. Following up on the memo that was written in January—the one that says Allen Carver in the right-hand corner and Jerry McDowell in the other—I don't believe Mr. Carver or Mr. McDowell were questioned about that memo in their depositions, but to supplement what I've read from Mr. Carver's depositions with Mr. McDowell's responses, again, under oath before our Committee in deposition at page 76:

Question: Did you identify—and this is of Mr. McDowell, a career—lifetime career employee of the Justice Department—did you identify any improper motive either at the SBA or in connection with the Congressional request relating to that issue?

Answer: No. I think there's always a concern about leaks and publicity wherever there is—wherever documents are compiled for an investigation and given to a body that's not a law enforcement agency, but until you see the leaks generally you give the benefit of the doubt to the Committee or whatever.

Question: Is it fair to say at this point that the leaks of information relating to Mr. Hale's matter, which was the SBA part of this investigation, had been orchestrated by Mr. Hale's counsel?

Answer: Well, that was certainly my impression. I mean, since Gerth said he got the information from Coleman.

So, again, we've got both sides of that conversation between two Department of Justice career professionals who have looked at the materials and in hindsight, in sworn testimony before this Committee, have indicated that there was nothing improper, either in the

motivation of the SBA or the White House in requesting the materials which had been sent over to Congress, and further, from a substantive standpoint, no one has identified any harm that has resulted from the transmittal of this information; is that correct, Mr. Eggleston?

Mr. EGGLESTON. I believe it sounds like it is.

Mr. BEN-VENISTE. Mr. Spotila.

Mr. SPOTILA. It appears to be correct.

Mr. BEN-VENISTE. Mr. Teckler.

Mr. TECKLER. Yes.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Earlier today, I just heard for the first time that testimony that George Stephanopoulos called the SBA and suggested that the SBIC program was important to the new White House and that he wanted more money for the program, et cetera. Mr. Chairman, this suggests to me that David Hale was probably in touch with the, i.e., new Clinton White House, George Stephanopoulos or even the President prior to the inauguration for this request to have come so early. This, of course, leads to greater credibility to Mr. Hale's charges.

Mr. Chairman, does the Committee intend to call Mr. Stephanopoulos before the Committee to have testimony regarding his contact, if any, with Mr. Hale or what other contact he might have had in asking and bringing this earlier request? It would certainly indicate we ought to hear what he has to say on it.

The CHAIRMAN. Senator, I am not in a position at this point in time, and I would ask for time to make a determination because it was the first time, I think, that anyone on the Committee had been made aware of this contact. I don't believe any depositions had indicated that there was this contact. It was one of the witnesses in the first panel who indicated that he learned of this. It would seem to me that what the Committee should do is contact the person who apparently received this phone call, one of the SBA people, and take a deposition, ascertain exactly what happened, because this was really hearsay. Of course, hearsay is permitted here, but this was a hearsay conversation that was reported by one of the SBA people. So I am going to ask that our Counsels attempt to ascertain the name of the Deputy—I believe it was a Deputy——

Mr. KRAVITZ. The name is Stanley.

The CHAIRMAN. Interview Mr. Stanley and find out exactly what the nature of that conversation was and then we will determine whether Mr. Stephanopoulos should be asked——

Senator FAIRCLOTH. I would hope——

The CHAIRMAN. —to come in.

Senator FAIRCLOTH. I would hope we do it quickly before we have Mr. Hale and find out what went on.

Senator SARBANES. Are we going to have Mr. Hale? Did Senator Faircloth say before we have Mr. Hale?

Senator FAIRCLOTH. I would hope we would have him. I don't see how we could do the investigation without him.

Senator SARBANES. I see.

The CHAIRMAN. If the question is raised as it relates to Mr. Hale, I think both Counsels, from what I understand, have agreed that it would be appropriate. It's a question of finding a time when we can bring him in. I would like to bring him in sooner rather than later so that he can testify and be examined. I thought that was something that had been agreed upon and there was no question of getting him in. When we get him in, et cetera, is another matter. The question of cooperation is certainly the key to bringing Mr. Hale in.

Mr. BEN-VENISTE. You mean in terms of immunity and the Fifth Amendment?

The CHAIRMAN. Yes.

Senator SARBANES. Are we going to address the immunity question, then, Mr. Chairman?

The CHAIRMAN. I think we have stated clearly that we would not grant immunity unless we received the concurrence of the Special Counsel or took it to the Senate as a whole. I'm not quite sure about that last part, but I do believe that our overall intent and goal was not to grant immunity unless we—and I would ask our Counsels to review the Resolution—have the concurrence of the Special Counsel.

Mr. BEN-VENISTE. That's correct, Mr. Chairman. We don't have the authority under our Resolution——

The CHAIRMAN. Right, then we can——

Mr. BEN-VENISTE. —unless the Independent Counsel concurs.

The CHAIRMAN. Or unless we went back to the body as a whole and achieved that, which, again, I think, would be academic because, without the concurrence of the Special Counsel, I don't believe that we would be successful in getting that. However——

Senator FAIRCLOTH. The purpose of the hearing is to get to the truth.

The CHAIRMAN. That's correct.

Senator FAIRCLOTH. I don't see how we're going to do it without Mr. Hale.

The CHAIRMAN. Let me say this to you: I believe Mr. Hale should be a witness before the Committee, and I believe that the Minority concurs in that. I don't mean to speak for the Minority, but at least in whatever limited discussions Counsels have had, I think that has been something which really is elementary and the only question is when are we able to bring him forth. I think sooner would be better than later. Given the circumstances that there is a trial in which he may be called forth to be a witness, obviously he could not, nor would you want him to testify while a trial is going on. That would be a legitimate concern of the Special Counsel. So it is a question of when are we able to get him in. I would like to see him come in. I think he's important to this.

Senator SARBANES. Mr. Chairman, I guess the point I was trying to get at, since we have these strong letters from the Independent Counsel about not having Hale before us as a witness—am I correct in that? I'll ask Counsel Chertoff.

The CHAIRMAN. He has indicated a reluctance. Now, having said that——

Senator SARBANES. Maybe we should just ignore what he said and bring him in.

The CHAIRMAN. I believe——

Senator SARBANES. I take it that's what Mr. Faircloth was suggesting.

The CHAIRMAN. I believe it is essential——

Senator FAIRCLOTH. Mr. Chairman, how about me moving on?

The CHAIRMAN. Let me just make this point and then I'll yield to the Senator because it is his time, and I'll ask that we restore his time. First, I believe an essential element will be Mr. Hale's testimony and his credibility. Second, I think that it's fair to say that the Chairman and Ranking Member have had limited discussions concerning this area, and we may be in the position where we will have to request witnesses come forward, notwithstanding some objection by Special Counsel. We will consider that, but I am prepared to bring Mr. Hale before this Committee. I believe it's an absolute necessity that he should come here. It's a question of timing, but he should be here to testify.

Senator SARBANES. Mr. Chairman, I would like to inquire whether you have had any discussions with Mr. Starr? The only discussion I recall where I was present was a very strong objection to having Hale, and in light of what's being said here, I'm curious as to whether you have had any subsequent discussions with Mr. Starr about this particular matter in light of the comments you have just made.

The CHAIRMAN. I have indicated to the Special Counsel I believe it will be necessary to bring in Mr. Hale, and that would be our intent obviously recognizing the problem of the trial. I also believe that he should be brought in sooner rather than later for a number of reasons. Number one, the question of compromising a trial. We should avoid that. Number two, if this matter is dragged out into February or later, I believe, legitimately, questions can be raised as to why we are bringing him in so late and getting into next year and the political season, and I think that's a very legitimate concern of this Committee, both Democrats and Republicans, and I would like to avoid that.

Senator SARBANES. Did Mr. Starr modify his position in your subsequent discussions with him?

The CHAIRMAN. No, he did not, but I indicated that I felt strongly and I believed that you concurred in that and I am willing to——

Senator SARBANES. I expressed that to him in our previous meeting, but I didn't know that a subsequent meeting with him had occurred.

The CHAIRMAN. I did not have a meeting, but I did speak to him on the telephone. I told him that it was my feeling that we would have to bring him in at some point in time. I conveyed that message, but there was no meeting. He did not change his position, but I let him know that we felt that that would be necessary.

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Mr. Lindsey——

Mr. LINDSEY. Yes, sir.

Senator SARBANES. Can I ask that Senator Faircloth be given his full time. I think most of his time here has been consumed in this exchange. It's obviously not fair that that be taken off his time.

Senator FAIRCLOTH. Thank you, Senator.

Mr. Lindsey, turning to page 35 of your November 21 deposition, did you ever determine if Mrs. Clinton was aware of David Hale's $300,000 loan to Susan McDougal?

Mr. LINDSEY. I do not remember having an answer to that. I don't believe that she was, but I don't remember specifically having heard tell about that.

Senator FAIRCLOTH. Is there any reason why you didn't specifically ask her, since the loan was supposedly for Whitewater and she was very much involved in it, a key and active partner, is there any reason you wouldn't have brought that question directly and asked her?

Mr. LINDSEY. I don't remember having the conversation in which we discussed it. I did put it in a memorandum that that was one of the questions that was being asked, and I sent a copy of that to Maggie Williams, but I do not remember specifically getting a response to that.

Senator FAIRCLOTH. You asked Maggie Williams to ask her?

Mr. LINDSEY. I indicated in the memo that at the end of the meeting they had three questions, one of which was whether or not Mrs. Clinton had any knowledge of the $300,000 loan.

Senator FAIRCLOTH. What did she say? What did Maggie Williams find out?

Mr. LINDSEY. Again, I don't think I ever got a direct response to that. I don't remember receiving a response to that.

Senator FAIRCLOTH. I can't imagine her not getting the question to Mrs. Clinton, can you?

Mr. LINDSEY. Again, I have no knowledge. I don't remember getting a response to that.

Senator FAIRCLOTH. When the counsel asks a question, usually you get an answer.

Mr. LINDSEY. At the time I was not the counsel. At the time I was simply——

Senator FAIRCLOTH. What were you?

Mr. LINDSEY. —relating a press question from, I think, either Gerth or——

Senator FAIRCLOTH. However, it would appear it was a question they didn't want to answer if they didn't get back to you. For whatever reason, they decided they didn't want to give an answer to that.

On page 50 of your November 21 deposition, the issue of Mrs. Clinton getting a retainer from Madison is raised. Did you ever ask Mrs. Clinton about the issue? Did she get the retainer?

Mr. LINDSEY. I don't remember specifically. I know through the last 2½ years that, in fact, the Rose Law Firm did not receive what I call a retainer. They received an advance against billing, which meant that they got money in advance. They then billed their normal hourly rate and at the end of the period, they returned the excess, if there was excess, or they billed the deficiency, if there was a deficiency, between the advance and their billings. My understanding was that they did receive $2,000 a month as an advance

and at the end of their representation, that they returned that. Now, I do not recall, again, exactly where I learned that piece of information during the last 2½ years.

Senator FAIRCLOTH. But you are aware of the details of how the $2,000 was paid and how the retainer—you say there was no retainer, but you're aware of how the money was paid to the Clintons?

Mr. LINDSEY. I'm not aware of how the money was paid. I understand that Madison paid $2,000 a month——

Senator FAIRCLOTH. Where did you understand it from?

Mr. LINDSEY. —to the Rose Law Firm. Again, I don't remember—this has been in the press. The Rose Law Firm has commented on this. Other people have commented on it. Mrs. Clinton may have commented on it in her press conference she held. I cannot tell you sitting here today when I learned of it and from what source. I do know that they were paid for a period of months——

Senator FAIRCLOTH. But you were aware of it. Did you ever ask Mrs. Clinton about it?

Mr. LINDSEY. I don't believe I've ever asked her directly about it.

Senator FAIRCLOTH. On page 51 of your deposition, the issue of Mrs. Clinton getting a retainer from Madison is continued. Did President Clinton tell you that he did not jog—and "jog" was the term that McDougal used—to Jim McDougal's office and ask him to put Mrs. Clinton on retainer because he needed money? Did the President specifically say that this incident did not occur?

Mr. LINDSEY. Again, I believe I have read that the President says he did not have anything to do with the Rose Law Firm being retained by Madison.

Senator FAIRCLOTH. I must say that Mr. McDougal must have a vivid imagination if he remembers it to the detail that he jogged over, was in shorts and got his new leather chair sweaty. Did you ask President Clinton? Did he say he didn't do it?

Mr. LINDSEY. I don't remember specifically. I believe I have read where President Clinton was asked that question and that President Clinton indicated that he had no involvement in the Rose Law Firm being retained by Madison Guaranty.

Senator FAIRCLOTH. You are close to President Clinton, aren't you?

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. It looks like this would just be a simple thing. Rather than this "indicated" and "read" and "thought," it looks like it would have been asked straight out: Bill, did you jog over there and tell him you needed the retainer? Wouldn't that be a simple, straight, flat way to go at it, rather than——

Mr. LINDSEY. Senator, this has been going on for over 2½ years. For me to be able to——

Senator FAIRCLOTH. That isn't very long.

Mr. LINDSEY. For me to be able to compartmentalize what I learned when and how in that period, I know that the President has indicated he had nothing to do with it. Whether the President told me he had nothing to do with it, whether before I could ask him somebody else asked him and he indicated he had nothing to do with it, I cannot recall.

Senator FAIRCLOTH. Mr. Chairman, it indicates more and more what I keep bringing up, that we need Mrs. Clinton here to answer the questions. That is the only way we're going to get the answers.

The CHAIRMAN. You did better today. One out of two is better than zero for two; right? I gave you one, that we're going to look at——

Senator FAIRCLOTH. I think we're going to get the truth when we get Mrs. Clinton here and that simply, flat is where we need to go.

Mr. Lindsey, on November 5, 1993, there was a meeting with you, Bill Kennedy, Bernie Nussbaum, Dave Kendall and others in Mr. Kendall's office. Do you remember the meeting?

Mr. LINDSEY. I remember a meeting in Mr. Kendall's office. I don't remember the date.

Senator FAIRCLOTH. Can you tell me who was there and what was discussed?

Mr. LINDSEY. I think I would have to determine whether or not privilege has been waived as to that.

Senator FAIRCLOTH. Are you saying client privilege is involved here?

Mr. LINDSEY. I believe so, yes, sir.

Senator FAIRCLOTH. Who's the client?

Mr. LINDSEY. The President of the United States.

Senator FAIRCLOTH. At that time you didn't work in the White House Counsel's Office. What was your position?

Mr. LINDSEY. I'm an attorney. I have been an attorney for a long time.

Senator FAIRCLOTH. But if you were not in the White House Counsel's Office, how can you claim privilege?

Mr. LINDSEY. There are other people who are entitled to the privilege. First of all, I believe I have an attorney-client privilege with the President. It's been waived at various times, but, second of all, there are people who are other than straight lawyers who can be a party to an attorney-client privilege.

Senator FAIRCLOTH. Do you think it's proper for a Government employee, which you were, to be spending his time acting as a private attorney for the President? Was that what the taxpayers were paying you for, to serve as the private counsel to the President?

Mr. LINDSEY. Again, first of all, I'm not asserting the privilege. I simply do not believe I can discuss it without knowing whether or not the privilege applies or whether it's been waived.

Senator FAIRCLOTH. Who's going to decide whether it applies or not?

Mr. LINDSEY. I assume you should talk to David Kendall. Second of all——

Senator FAIRCLOTH. David Kendall worked for the President, didn't he?

Mr. LINDSEY. He was the Attorney for the President.

Senator FAIRCLOTH. It's a pretty good guess he's going to say no, then, don't you think?

Mr. LINDSEY. I don't know the answer to that, Senator.

Senator FAIRCLOTH. The President had two meetings with Jim Guy Tucker after information came to the White House regarding the RTC criminal referrals and David Hale's, one on October 6 and the other on November 18. The White House has denied that

Whitewater came up on October 6, but how do you know that the subject was not raised and did you specifically ask the President if it came up?

Mr. LINDSEY. Yes, I did. He told me it had not. Keith Mason was present during the entire conversation. He has indicated that it did not come up. I've spoken with Jim Guy Tucker's Press Secretary, who, as I understand, has asked Governor Tucker, who has also indicated publicly that it did not come up.

Senator FAIRCLOTH. Was Capital Management or David Hale discussed at the October 6 meeting?

Mr. LINDSEY. My understanding is none of those matters were discussed.

Senator FAIRCLOTH. Was Whitewater or Capital Management discussed at the November 18 meeting?

Mr. LINDSEY. I don't believe there was a November 18 meeting. We were in Seattle, if that's what you're referring to, and the President attended a reception that was for the Arkansas people who were attending the Asian Pacific economic conference. I don't believe that the President had a separate private meeting with the Governor.

Senator FAIRCLOTH. He did not meet with Jim Guy Tucker on November 18?

Mr. LINDSEY. I believe that Governor Tucker was at the reception. I am not aware of a separate meeting, other than the reception at which there were over 100 people on——

Senator FAIRCLOTH. Did you know that there was not a private meeting?

Mr. LINDSEY. I was not with him 24 hours in the day, so I guess the answer to that is no. I do not believe they had a separate meeting.

Senator FAIRCLOTH. On page 98 of the November 21 deposition, did you discuss Dan Lassiter's allegations with the President in 1993 or 1994?

Mr. LINDSEY. I'm sorry, what allegations are we talking about?

Senator FAIRCLOTH. Did you discuss with him his modus of granting a pardon to Dan Lassiter?

Mr. LINDSEY. Again, I don't remember whether I asked him or I learned from others that, in fact, the State had restored Dan Lassiter's right to hunt, which is all the Governor—Mr. Lassiter was convicted of a Federal crime. The Governor of Arkansas could not grant him a pardon. He could restore his right to hunt, which I believe the Governor did do.

Senator FAIRCLOTH. In other words, i.e., to own a gun?

Mr. LINDSEY. I don't know if to own a gun, but to hunt with a gun, yes.

Senator FAIRCLOTH. When reporters were making allegations about the relationship between the President and Dan Lassiter, did you ever discuss these allegations with Patsy Thomasson?

Mr. LINDSEY. I'm sorry, I'm not sure that I've ever seen any allegations about the President and Dan Lassiter, so I'm not quite sure what allegations you're referring to.

Senator FAIRCLOTH. There were a lot of allegations about the State bond contracts to buy the radios for the State. Those were

certainly allegations about a relationship between Dan Lassiter and the President. You hadn't heard those?

Mr. LINDSEY. Yes, sir. There was an allegation—I don't know if I would call it an allegation——

Senator FAIRCLOTH. Dan Lassiter issued the bonds?

Mr. LINDSEY. Lassiter participated, I believe, in a bond issue to buy the State police a radio system. I do not remember discussing that with Patsy Thomasson. I could have, but I don't remember.

Senator FAIRCLOTH. Wouldn't it have been a logical thing to do since she worked for him, I believe, for 8 or 10 years, it was testified, and she ran his business while he was in prison. Wouldn't she have been a key source of information for you?

Mr. LINDSEY. There wasn't anything to gather from Mr. Lassiter with respect to that. The Governor had indicated that he was a strong supporter of updating the State police radio system, and it was public knowledge, I think, that the State police board had approved Lassiter, and I believe the Governor had indicated maybe even as far back as the campaign, that he had had nothing to do directly with the selection of bond council, but that he had been a strong supporter of the State police system.

Senator FAIRCLOTH. All right. Are you aware that the White House prepared talking points for the House Democrats on Jean Lewis for the hearing held in the House?

Mr. LINDSEY. I don't believe so.

Senator FAIRCLOTH. You're not aware that——

Mr. LINDSEY. Again, I was asked in my deposition if I knew whether or not the White House had ever prepared some sort of fact sheet on Jean Lewis, and I said no. Now, whether or not I've ever seen talking points, I don't recall. I don't remember seeing them, no.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Mr. BEN-VENISTE. Mr. Chairman, just for purposes of completeness in the record, since there were questions about the meeting between President Clinton and Governor Tucker, the other person who was present for the meeting was deposed by us, prior to this round of hearings, on October 25, 1995.

That would be Keith Wayne Mason and he testified, specifically at pages 46 through 48, with respect to that meeting:

Question: At the October 6 meeting between the Governor and the President, was there any discussion whatsoever relating to Madison Guaranty Savings & Loan?

Answer: No.

Question: At the same meeting was there any discussion whatever pertaining to Whitewater Development Corporation?

Answer: No.

The answer was the same with respect to Resolution Trust Corporation, criminal referrals, and all of the matters that we've been discussing here without going into it.

Beyond that, Counsel for the Committee, Mr. Chairman, has reviewed the handwritten notes of Mr. Mason with respect to that meeting, and those notes corroborate Mr. Mason's testimony, in that nothing is reflected in those notes that would suggest that

those matters were discussed at that time. Other than that, I have nothing further.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Lindsey, I would like to pick up on what you were doing in connection with these emerging allegations in the fall of 1993. To put this in a total context, I think we left off after you had a conversation with Mr. Gerth on September 20. You had then had a conversation with Mr. Blair where Mr. Blair furnished you with some information concerning Mr. McDougal's target status, an issue involving a possible immunity question coming up for Mr. Hale.

You had solicited some information that was provided to you by fax involving Madison Marketing and the use of Madison Marketing money in order to pay off a Clinton personal loan. All of this occurred——

Mr. LINDSEY. Again, I don't recall getting that. Certainly, given the timeframe of this document that Jim Lyons had prepared, given the date it's prepared, I certainly could have, but I don't independently recall asking that this be done.

Mr. CHERTOFF. It's dated September 23, 1993; right?

Mr. LINDSEY. That's correct, which would strongly suggest that it followed this conversation. Again, when I was asked whether I had seen it, I don't recall seeing it, but——

Mr. CHERTOFF. You don't have a doubt that you got it?

Mr. LINDSEY. I don't remember getting it, but it could well be that I did. I'm not denying that I did.

Mr. CHERTOFF. It was produced through your files.

Mr. LINDSEY. No, it was not, sir.

Mr. CHERTOFF. It was produced through White House files.

Mr. LINDSEY. No, sir. I believe it was produced from Jim Lyons files. The copy I have is a fax to Jim Lyons from Mr. Patton.

Mr. CHERTOFF. You're right. It's from Jim Lyons' files. So you don't remember whether you got it or not?

Mr. LINDSEY. No, sir, but I certainly could have. Just for the record to be straight, I don't recall, and I indicated in my deposition I didn't recall having seen this.

Mr. CHERTOFF. But certainly the notes of your conversation with Mr. Blair and Mr. Gerth in your own handwriting are your notes?

Mr. LINDSEY. Yes, and they came from my files.

Mr. CHERTOFF. Now, on around September 30 or October 1, I believe it's Mr. Eggleston who comes to you and tells you about these new impending criminal referrals involving Madison Guaranty; correct?

Mr. LINDSEY. Either Mr. Eggleston, Mr. Sloan, or both.

Mr. CHERTOFF. You understood that Madison Guaranty was Jim McDougal's bank or had been Jim McDougal's bank; is that right?

Mr. LINDSEY. Yes, sir.

Mr. CHERTOFF. But your testimony is at that point you don't draw a connection in your mind between the fact that McDougal is involved with Hale's allegation of fraud on the SBA, and that, meanwhile, the RTC is making criminal referrals that involve McDougal and fraud involving the bank. You don't connect those?

Mr. LINDSEY. I may have. By then, the Hale indictment was public. I just cannot tell you today that, when I learned of that, I im-

mediately thought of the David Hale conversation with Jeff Gerth. I just, again, 2½ years later, cannot put those two together and say yes, when I heard it, I thought of it. I don't recall it that way.

Mr. CHERTOFF. On October 4, you have a telephone conversation with Jim Lyons; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. You've testified last year about that conversation as having to do with press accounts that relate to these criminal referrals?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Of course, that's the same Jim Lyons whose name is on the Madison Marketing fax of September 23 which would have been about a week before; right?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Now, in this conversation with Mr. Lyons on October 4, did you get into the subject of, for example, besides these referrals, what further information do you have involving Hale's allegations and Madison Marketing?

Mr. LINDSEY. No, I don't recall doing that, but, again, that was 2½ years ago. I don't believe that occurred.

Mr. CHERTOFF. Does it seem likely, though, that, with this separate criminal investigation hovering around involving McDougal, you would have brought that up in the conversation?

Mr. LINDSEY. The David Hale aspect of it?

Mr. CHERTOFF. Yes, with Mr. Lyons.

Mr. LINDSEY. No.

Mr. CHERTOFF. Why were you talking to Mr. Lyons? What was your job responsibility at this point that was putting you in the position to be collecting information from various sources about criminal investigations or referrals?

Mr. LINDSEY. I was mostly learning what the press was working on. As I indicated, during the latter part of 1993, I was the person in the White House who was responsible for responding to press inquiries. That is why I believe I was involved in the Jeff Gerth meeting on the 20th. That is why I met with some Washington Post reporter. Mr. Lyons was calling me to tell me that he had received calls from Jeff Gerth, and maybe from Mr. Izacoff of The Washington Post, related to some RTC referrals.

Mr. CHERTOFF. So you're not acting as legal counsel there, you are acting as a press coordinator or center resource?

Mr. LINDSEY. I was the person in the White House who responded to press inquiries during the latter part of 1993 with respect to Arkansas-related matters, including Whitewater.

Mr. CHERTOFF. Now, on October 5, you're on the airplane with the President and you have a conversation with him in which you, as you previously testified, talk about some of the information you learned from Mr. Lyons. I believe you testified last year you may have discussed with him or may have integrated into that the fact that you had heard from Treasury that there were criminal referrals coming involving McDougal.

Mr. LINDSEY. I cannot departmentalize whether I just spoke to him about what I'd heard from Lyons or whether I went beyond that, that's correct.

Mr. CHERTOFF. What did he say?

Mr. LINDSEY. I don't think he had any specific reaction. There had been stories, around the same time there was a story in the Arkansas paper about a 1992 criminal referral involving the RTC. So I don't remember a specific reaction. He simply took the information I gave him.

Mr. CHERTOFF. So you tell him the information about these additional criminal referrals that are imminent involving McDougal and he has no reaction; right?

Mr. LINDSEY. I don't recall a specific reaction. I indicated to him that my understanding was, from the press, that there were referrals involving Madison and that the Clintons were mentioned, but I believe that that was the only reference.

It was not illogical at this time that any referral with respect to Madison after the 1992 campaign would mention the Clintons. So it was not particularly significant in my judgment at the time and event.

Mr. CHERTOFF. Since you're on the subject, again following the notion of what's logical, did you then say by the way, Mr. President, by coincidence I've also heard that David Hale is out there making accusations about your involvement with a SBA loan fraud?

Mr. LINDSEY. The President was aware of that. That was all in the paper 2 weeks earlier.

Mr. CHERTOFF. So you had previously discussed that with him?

Mr. LINDSEY. No, sir. As I told you, I asked the President at some point whether or not he had had one, two, or three conversations with David Hale in which he encouraged David Hale to make a loan to Susan McDougal. He indicated he had not. In the meantime, 2 or 3 days after my conversation with Jeff Gerth in which he related to me what David Hale was claiming, David Hale went public—I guess he went public when he talked to Jeff Gerth—and there were then press stories relating the exact same information.

So, one, I didn't mention it to the President and, two, he was probably aware of it by then because he could have read it in the papers.

Mr. CHERTOFF. Was there a sense you had, as of October 5 when you were there with the President, with Mr. Hale out there making certain allegations and with Mr. McDougal coming in under increasing pressure, that there might be a concern about what Mr. McDougal might start to say about the President?

Mr. LINDSEY. No.

Mr. CHERTOFF. That subject never came up?

Mr. LINDSEY. No, sir.

Mr. CHERTOFF. Didn't you, in fact, have conversations back and forth with Mr. Blair from Tysons sometime in the next few months concerning whether he had been involved in an effort to get Mr. McDougal to retract some of his statements to the press?

Mr. LINDSEY. Jeff Gerth wrote a letter to Mr. Blair saying that in 1992, in March or April 1992, after the first Gerth story, Mr. McDougal believed that Mr. Blair, through this letter, had exerted pressure on him.

First of all, I had a conversation with Mr. Gerth in which I think he related those same allegations to me. I got a copy of the letter

that he had sent to Mr. Blair outlining those, and I spoke with Mr. Blair about that.

That was not related to anything in September or October 1993. That had to do with something that Jim McDougal said happened in April, I believe, March or April 1992.

Mr. CHERTOFF. What Mr. McDougal alleged, in substance, was that he had received some kind of pressure to keep his mouth shut about Whitewater?

Mr. LINDSEY. No, he said he got a letter, his lawyer got a letter. I've seen the letter and the letter says, in effect, why would Jim want to—having gone through a trial and been acquitted, why would he want to raise this whole issue again. That's in the letter. I think you have the letter.

Mr. CHERTOFF. In January 1994, when this subject comes up, do you have a conversation with Mr. Blair and Mr. McDougal about this whole issue of whether he's going to say he was pressured?

Mr. LINDSEY. All right, first of all, let me go back. When was the letter from Gerth?

Mr. CHERTOFF. All right. We'll go to the documents. Put it up on the screen. S 12375. It's a fax.

Mr. LINDSEY. Right.

Mr. CHERTOFF. It's a fax from Tyson Foods, Inc., and, again, Tyson Foods is the company for whom Mr. Blair is General Counsel; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Actually, the fax is from Archie Schaffer, the Director of Media, Public and Government Affairs—it says, Tyson Foods. By the way, Archie Schaffer, who sent this fax, is the husband of Beverly Bassett-Schaffer?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. Do you know Mr. Schaffer?

Mr. LINDSEY. Yes.

Mr. CHERTOFF. Ms. Bassett-Schaffer was your former partner?

Mr. LINDSEY. Right.

Mr. CHERTOFF. Tell us what he sends you in this fax in January 1994, and, again, is this still in your capacity as press clearinghouse at the White House?

Mr. LINDSEY. Again, I think by the time I got this, I had had a conversation with Jeff Gerth but I'm not sure of that. Jeff Gerth had raised these questions with me.

Mr. CHERTOFF. What happens is Blair sends you a copy of the letter that Gerth sent to Blair; right?

Mr. LINDSEY. Yes. I believe Mr. Blair actually was out of the country and that's why Mr. Schaffer actually faxed it to me.

Mr. CHERTOFF. Can you help us, these notes, these handwritten notes on the lower right-hand side, can you read these for us? This is your handwriting?

Mr. LINDSEY. Yes, that's my handwriting.

Mr. CHERTOFF. What does it say there?

Mr. LINDSEY. It says:

HRC, dash, Counsel to the Clintons. Libel suit, dash, absolutely true. Letter, dash, not sure, dash, will check. Explain to Sam a trial acquittal. Why would he by talking to the press get himself reindicted? Not in his interest.

Mr. CHERTOFF. This was from your conversation with Mr. Blair?

Mr. LINDSEY. I believe so, yes.

Mr. CHERTOFF. Explain to us what you and Mr. Blair were talking about that you have recorded in your notes here.

Mr. LINDSEY. Again, Mr. Gerth had called me and indicated to me that he had spoken, I believe, with Mr. McDougal who felt, back in March or April 1992, that Mr. Blair had tried to pressure him not to talk. He supposedly raised a libel suit, raised turning over documents without checking with the Clintons, raised three or four matters. You have the letter, you can see the matters that were raised.

I had not seen the letter, I don't believe, at this time. It's clear, at least it suggests to me, that maybe even he wasn't sure whether he had sent a letter because it says "letter not sure, will check."

I was simply asking Jim Blair what is this about, did you have a conversation with Sam Heuer or Mr. McDougal. What was the purpose, what did you discuss, did you discuss libel suit, what did you say to him. This was my notes of his response.

Mr. CHERTOFF. What did Mr. Blair say about HRC Counsel to the Clintons, what was that about?

Mr. LINDSEY. Beyond the notes, I don't remember. I may have asked him how he was acting and he said he was acting as Counsel to the Clintons.

Mr. CHERTOFF. So your recollection is that Mr. Blair told you that back in 1992 when he talked to Mr. McDougal, he may have been acting as Counsel to the Clintons?

Mr. LINDSEY. As reflected in the notes, that's a logical reading. I am disinclined to characterize it because I don't remember the conversation, and I have the notes that reflect, and, again, they speak for themselves.

Mr. CHERTOFF. Unfortunately, they don't.

Mr. LINDSEY. They speak as much as I recall.

Mr. CHERTOFF. And no more. Let's go to the next set of handwritten notes, which is 12378, which appears to be a continuation of this subject about Mr. Blair trying to get Mr. McDougal to do something.

Mr. LINDSEY. I think there is a confusion here.

Mr. CHERTOFF. Is this your handwriting, by the way, on 12378?

Mr. LINDSEY. Yes, it is. It's the middle page of a three-page note. The other two pages, which I provided to the Counsel for the Majority during my deposition, were inadvertently not provided by the White House Counsel's Office. So this is the middle page of three pages of notes of a conversation I had with Jeff Gerth.

Mr. CHERTOFF. Is that middle page—you are telling us they're all part of a package you provided?

Mr. BEN-VENISTE. Page 4431 I believe.

Mr. CHERTOFF. Is one 4937? Page 4431 is on short note paper. You say 4431 is another part of the same set of notes?

Mr. LINDSEY. Right, 4431 and 4433 are part of the same note on my original—these are the White House Bates numbers. On my original Bates numbers, this particular page is 4432. So it falls between 4431 and 4433, which I provided to Counsel during my deposition.

Mr. CHERTOFF. Pages 4431 and 4433 are on paper with White House written at the top?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. And this is on paper without White House written at the top?

Mr. LINDSEY. I believe this is the back. Again, I don't have the originals anymore. I believe this is the back of one of the cards. The cards have White House on this side and have nothing on this side. So I think page 4431 is on this side, 4432 is on the back, and 4433 will be on the front of a second card.

Mr. CHERTOFF. So this is what reporters are telling you is your testimony?

Mr. LINDSEY. That's correct.

Mr. CHERTOFF. This is, again, reporters telling you that Mr. McDougal was claiming that Mr. Blair was trying to get him to sue The New York Times? Is that what they were telling you?

Mr. LINDSEY. Again, yes. It's reflected in more detail in Jeff Gerth's and Steve Engelberg's letter to Jim Blair. If you'll notice, at the end of their letter to Jim Blair which was faxed to me, it says "we will be asking Bruce Lindsey these same questions, but wanted to give you a separate chance to respond."

I believe that these three documents, the middle one of which you have, are them asking me the same questions that are reflected. So, to the extent that it's not my notetaking but their sentences, this would be a better reflection of the typed one that they sent to Mr. Blair and would reflect their questions.

Mr. CHERTOFF. So, to focus on this, what do you have in your mind, so we can compare that to your conversation with Mr. Blair on 12375, when it says here, "R.D. Randolph discussion with Jim McDougal. R.D. had a conversation with B.C. as well as Blair. Expressed misgivings that Clintons at all had with his having talked." What's that about?

Mr. LINDSEY. I assume that is Jeff Gerth telling me a conversation he had with someone, either McDougal, R.D. Randolph, or somebody.

Mr. CHERTOFF. You have no recollection of what that is?

Mr. LINDSEY. Again, is it reflected in here?

"During the campaign R.D. Randolph, a Little Rock associate of Mr. McDougal's, went to see Mr. McDougal to express misgiving—Mr. Clinton's misgivings about his having talked to reporter."

Again, this is simply my note of Jeff Gerth telling me the exact same questions or the exact same information he mailed and faxed a letter to Jim Blair about.

Mr. CHERTOFF. Then, when you talked to Mr. Blair about it, you kept your notes of your conversation with Mr. Blair and they are on S 12375; is that right?

Mr. LINDSEY. I believe that's all the notes of my conversation with Blair, yes.

Mr. CHERTOFF. The reference to that "libel suit, absolutely true" is what, what did Mr. Blair tell you about that?

Mr. LINDSEY. Jim McDougal, I believe, after the Gerth story, was saying that he had been misquoted and that he hadn't said those things. You would have to go back and look at the press coverage in March 1992. I think that he was indicating that if, in fact, he felt he had been misquoted, he might have had a libel suit against The New York Times.

Mr. CHERTOFF. Mr. Blair was involved in discussing this with him, acting as Counsel to the Clintons?

Mr. LINDSEY. Again, you would have to ask Mr. Blair what role he saw himself in.

Mr. CHERTOFF. Let me step back again to November, and finally follow up on some questions that Senator Faircloth asked you concerning a meeting on November 5. I don't know, Mr. Chairman, if you want me to break now before I get to that.

The CHAIRMAN. How much longer?

Mr. CHERTOFF. A couple of minutes.

The CHAIRMAN. Why don't you finish it then.

Mr. CHERTOFF. To put it in context, there's a series of conversations you have with members of the press or you have a conversation with Mr. Blair. You get information from Treasury and the RTC. You had a meeting with, I guess, Mr. DeVore from Treasury and Ms. Hanson from Treasury on October 14. You collected information from Betsy Wright regarding the campaign, back in October, concerning allegations involving campaign checks.

All of this was going on in September and October 1993; correct?

Mr. LINDSEY. Correct.

Mr. CHERTOFF. Then, on or about November 5, 1993, you attend a meeting at Mr. Kendall's office here in Washington; right?

Mr. LINDSEY. Again, I don't know the date. I did attend a meeting at Mr. Kendall's office.

Mr. CHERTOFF. Around that time, around November 5?

Mr. LINDSEY. Could well be, yes.

Mr. CHERTOFF. Who else was at the meeting?

Mr. LINDSEY. That's the information I'm not sure, without a waiver from the President and Mr. Kendall, I can discuss.

Mr. CHERTOFF. Mr. Lindsey, surely you know that the identity of speakers in a meeting is never privileged.

Mr. LINDSEY. I'm not sure in all cases that's true. I'd be happy to tell you who I believe was there, if I am told by Mr. Kendall that that's appropriate.

Mr. CHERTOFF. I just want to make sure we have this. For the record, is your position that identifying who the speakers are——

The CHAIRMAN. Participants——

[Witness conferred with counsel.]

Mr. LINDSEY. My counsel tells me I can tell you that the other people who were there were attorneys, but beyond that, I think I would have to speak with Mr. Kendall.

Mr. CHERTOFF. Well——

The CHAIRMAN. Where did the meeting take place?

Mr. LINDSEY. Excuse me?

The CHAIRMAN. Where did the meeting take place?

Mr. LINDSEY. I believe it took place in Mr. Kendall's office. The meeting I'm making reference to took place in Mr. Kendall's office.

The CHAIRMAN. At that point in time what was your employment at the White House, what was your capacity?

Mr. LINDSEY. I was Assistant to the President, Senior Adviser, and probably still Director of Presidential Personnel.

Mr. CHERTOFF. What was your purpose in going to the meeting?

Mr. LINDSEY. I had been involved, going back—if I discuss what the purpose of my being there was, I will, in effect, I think, tell you what the purpose of the meeting was.

Mr. CHERTOFF. Mr. Lindsey, the only way to test whether you have a privilege is to determine who was present and what the purpose of the meeting was. Surely you know that.

Mr. LINDSEY. The purpose of the meeting was Whitewater Development Corporation.

Mr. CHERTOFF. Was it to deal with press inquiries, was it to prepare a legal defense? There's a significant difference in terms of whether there's a privilege.

Mr. LINDSEY. It was not for the purposes of press inquiries.

Mr. CHERTOFF. OK. Was it a part of a joint defense with the President's personal lawyers and the White House lawyers? I'm just trying to elicit the groundworks to see——

Mr. LINDSEY. Excuse me just a second. Can I——

[Witness conferred with counsel.]

The only other person, other than the ones that Senator Faircloth mentioned, that I remember being there was Steve Engstrom, who is a Little Rock attorney.

Mr. CHERTOFF. A Little Rock attorney. My question is, was this a legal defense meeting? What was the purpose of the meeting?

Mr. LINDSEY. Yes, I believe it was. That would accurately characterize the meeting.

Mr. CHERTOFF. Now, did you——

Senator SARBANES. Was Mr. Lindsey asked about these matters at his deposition?

Mr. CHERTOFF. I believe at the deposition Mr. Lindsey's counsel made a statement, at the very beginning, that he regarded the meeting as privileged. One of the reasons I'm a little surprised to hear that Mr. Lindsey has not received guidance is because it was clearly a matter that was highlighted at the deposition as being of interest.

Mr. LINDSEY. I beg your pardon. If I may respond to that, since I was there. I do not believe this subject ever came up at my deposition.

Mr. CHERTOFF. I think counsel made a statement on the record at the beginning that there was some privileged meetings that were not going to be discussed.

Mr. LINDSEY. We had a general discussion about privileges after April 1994, but we certainly didn't have a discussion about this particular meeting in any way, shape or form.

Mr. CHERTOFF. In any event, the questions I am asking are standard, preliminary questions designed to set a record and to determine whether there could even be privilege here, by way of example, if the purpose of the meeting were to do press inquiries, that would not be subject to the attorney-client privilege. And frankly——

Senator SARBANES. I would have thought that if it was going to be pursued here, it would have been raised in the deposition.

Mr. CHERTOFF. Mr. Lindsey, in your mind now, we've established that the purpose of the meeting was a legal defense meeting. Did you have a concern that in taking information you would receive, for example, as of this point in time, with respect to the confiden-

tial RTC referral information, did you have a concern about whether you might take that information over to this group of lawyers who were engaged in legal defense?

Mr. LINDSEY. I don't believe I had received any confidential RTC information. Almost all the information I had received about the RTC referrals came from the press.

Mr. CHERTOFF. You had received information on October 14 from Jean Hanson; right?

Mr. LINDSEY. In response to a press inquiry from Jeff Gerth.

Mr. CHERTOFF. Did you talk to Mr. Eggleston during this same period in November about obtaining information from the SBA?

Mr. LINDSEY. I'm sorry. Repeat the question.

Mr. CHERTOFF. Did you talk to Mr. Eggleston again during this same period in November about obtaining information from the SBA?

Mr. LINDSEY. I received a copy of the cover letter that went to the House Small Business Committee. I read the reference to the attachments. I have seen a note that reflects that I asked whether or not we had the attachments and what was in them. I never saw the attachments. I got a note back, or my secretary or assistant wrote a note back, saying that the attachments were at the SBA.

Mr. CHERTOFF. We'll put the note up in a second, just to stimulate your memory, because I just want to close this off and see how all this movement of information back and forth between agencies and the White House may fit with defense meetings over at the President's private law firm. Let's put it up on the Elmo.

Mr. LINDSEY. I'm having trouble reading that one.

Mr. CHERTOFF. "Neal Eggleston said the additional information is at SBA and is approximately"—you have to move it over a little bit—no, no. Excuse me for a second. If you'll just restore the E-mail up there. It says:

> Neal Eggleston said the additional information is at SBA and is approximately a foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can obtain a copy of the documents if it appears necessary but does not believe it is problematic.

Isn't the fact, Mr. Lindsey, that what spurred Mr. Eggleston to get the information from the SBA wasn't idle curiosity based on press reports but some particular interest to see whether the President or the First Lady were mentioned in them, and that was a particular interest that you had articulated to him?

Mr. LINDSEY. This was after he had received a copy of the cover letter at least.

Mr. CHERTOFF. Right.

Mr. LINDSEY. Mr. Eggleston's here and has testified as to what his motivation was and why he did it.

Mr. CHERTOFF. But how did you get hooked into this thing with the SBA?

Mr. LINDSEY. I read the cover letter. The cover letter in the last paragraph says, "We are providing additional attachments." I probably called and said have we seen the attachments, do we have the attachments, is there anything in the attachments that is problematic.

Mr. CHERTOFF. How did you get the cover letter?

Mr. LINDSEY. I don't know who gave it to me.

Mr. CHERTOFF. Did Mr. Eggleston give it to you?

Mr. LINDSEY. I don't recall who gave it to me. I got it from the White House but I don't know whether Mr. Nussbaum gave it to me, Mr. Eggleston, or who.

Mr. CHERTOFF. Mr. Eggleston, did you give the cover letter to Mr. Lindsey?

Mr. EGGLESTON. I don't remember giving the cover letter to Mr. Lindsey.

Mr. CHERTOFF. The problem I'm having is this, Mr. Eggleston, you testified you get this information, you look at it, it's of no interest, you put it in the drawer, and then you send it back. Now we have an interest from Mr. Lindsey who is apparently interested enough to find out what information you are getting from the SBA, and you are having discussions about getting copies of documents.

How does this get from you, Mr. Eggleston, over to you, Mr. Lindsey?

Mr. LINDSEY. How did what get——

Mr. CHERTOFF. This cover letter and this notion that there's a necessity to make inquiries at the SBA about whether there is a reference to the President or the First Lady.

Mr. LINDSEY. From my point of view, I read the cover letter and the cover letter makes reference to attachments. I probably simply asked my assistant do we have the attachments, and is there anything in there of interest.

Mr. CHERTOFF. You have no idea how you got that letter?

Mr. LINDSEY. The cover letter?

Mr. CHERTOFF. You have no idea how you got that cover letter?

Mr. LINDSEY. No, I do not remember who handed me the cover letter, no.

Mr. CHERTOFF. Now, let me go back to this November 5 meeting, and I think you can probably see the connection now between the two because the timing of the November 5 legal defense meeting comes right in the thick of getting all the RTC information, and now trying to find out what the SBA is doing certainly creates a set of circumstances that warrants inquiry. My question then comes back to this November 5 legal defense meeting.

Was there a discussion in that meeting about trying to get information from either the SBA or the RTC about what these investigations were doing?

[Witness conferred with counsel.]

Mr. LINDSEY. Without a waiver, I do not feel like I can answer any questions about the substance of that meeting.

Mr. CHERTOFF. Do you know whether any other person who attended that meeting has waived the privilege with respect to that meeting?

Mr. LINDSEY. I do not know that; no, sir.

Mr. CHERTOFF. Your understanding is you have to get a waiver of that privilege from the President?

Mr. LINDSEY. I would take it from the President's attorney, Mr. Kendall.

Mr. CHERTOFF. Actually, you were attending as an official Government employee. I mean, if you were representing the President, it was in his official capacity; correct? Is it Mr. Kendall's decision

whether you as a Government employee representing the President officially should waive the privilege?

Mr. LINDSEY. I'm sorry. I've not given enough thought as to whether or not I could accept a waiver that Mr. Kendall told me it was fine to waive or that he had spoken to the President and the President indicated that it was waived or not waived. Again, this is the first time this has come up.

I am reluctant to talk about the substance of the meeting without someone indicating to me that the privilege has been waived or is to be waived.

Mr. CHERTOFF. When you communicated with Mr. Eggleston, as you evidently did from this document that's up here, in connection with getting SBA documents, did you tell Mr. Eggleston anything that had occurred at this legal defense meeting?

Mr. LINDSEY. The answer to that is two-part: First, I don't believe, based upon the way this document is, that I spoke to Neil. My connotation is that I asked my assistant to find out whether or not there were any attachments or whether we had the attachments. I don't believe I spoke to him directly. The second answer is no, I did not.

Mr. CHERTOFF. Did you find out if there were attachments?

Mr. LINDSEY. Yes, I did. I found out that they were approximately a foot high.

Mr. CHERTOFF. Did you ask to see the attachments?

Mr. LINDSEY. No, I don't believe, anything beyond getting this note back, I did anything with respect to this matter.

Mr. CHERTOFF. Were you interviewed by the FBI in connection with this?

Mr. LINDSEY. I don't believe so. I have been interviewed so many times it's hard to remember, but I don't believe I have been interviewed on this subject.

Mr. CHERTOFF. Mr. Chairman, thank you. I think at this point I'm at an end because we've bumped up against this November 5 meeting, and perhaps I could respectfully suggest that the Chairman might ask Mr. Lindsey if he would talk to whomever he has to talk to to see whether this privilege is going to be asserted or whether it's already been waived.

The CHAIRMAN. First of all, let me thank Senator Sarbanes, the Ranking Member, for permitting us, with some continuity, to move through this.

I understand, and I say this publicly, that the White House has a memo of this meeting and is asserting privilege. I believe that is an area that is in contention. I'm going to ask the Counsels to see if they can work this out, as we have in the past, if in some way or some manner it can be provided, that it be made available. I'd hate to think that we could not resolve it, but I'm going to leave that to Counsel. I mean, the hour is late right now.

I would say this, Mr. Lindsey, I see the Gerth conversation, the Blair conversation, the Lyons memo, Mr. Eggleston, Mr. Sloan, that's five of them. I know of the RTC referrals going to you.

Mr. LINDSEY. No, sir.

The CHAIRMAN. You weren't advised of the RTC referrals? You weren't told about those by Jean Hanson?

Mr. LINDSEY. Your comment was that the RTC referrals came to me——

The CHAIRMAN. You were told about the RTC referrals and you were given a review as it relates to the contents and description of them, weren't you?

Mr. LINDSEY. There's a note that reflects what information I was given, yes.

The CHAIRMAN. Now, one of the reasons given is there were press inquiries; is that true?

Mr. LINDSEY. That's my understanding, yes.

The CHAIRMAN. Wasn't also one of the reasons given they wanted to avoid the President possibly getting into a compromising situation?

Mr. LINDSEY. I don't know if that was one of the reasons or not. You'll have to ask Ms. Hanson.

The CHAIRMAN. It was one of the reasons I have never heard of the possibility of a press inquiry leading someone to obtain this kind of information. That is a source of contention, there are those who contend that that is within the scope.

I don't know of legal precedent whereby possible indictments or criminal referrals would be made and the people and subjects would be made available, but I have to tell you it's rather distressing when you have almost no recollection of the subject matters which are rather important and to which you are obviously assigned mentioned in your own notes, in terms of gathering this information.

I would also suggest to you that it is troubling if, indeed, one of the reasons, in addition to press inquiries—and that was offered by a number of witnesses, I think White House Counsel and Treasury people—is to keep the President from being placed in a situation where, if there is somebody who is under investigation and may be indicted, they then might find themselves in contact with him.

I know there's a question as to when you got this information and when you passed it on to the President, but then the President has a meeting with one of those people.

It would just seem to me that if that precaution—and, by the way, I don't believe that that is inappropriate. I think it is appropriate for counsel in the White House, if they learn of something that could potentially be embarrassing or place the President in an embarrassing meeting or position, to say, for example, as it relates to certain people, we just want you to stay away, but that's not what took place and——

Mr. LINDSEY. As you know, Senator, I do not believe——

The CHAIRMAN. I'm just telling you something that has troubled me. If you go to great lengths with Jean Hanson concerning the referral then I don't understand how that meeting would have been permitted. Now, I understand a young man there says Whitewater was not discussed, but if, indeed, that was one of the purposes, it is troubling that that meeting would have been permitted.

Mr. LINDSEY. Senator, as you know, I do not believe I learned that Jim Guy Tucker's name was mentioned until after that meeting occurred.

The CHAIRMAN. All right. I just wanted to share with you some of my concerns.

Senator Sarbanes, I think it's only fair if you or Mr. Ben-Veniste want to make some points.

Senator SARBANES. I yield to Mr. Ben-Veniste.

The CHAIRMAN. Certainly, and I don't believe there will be any more questions after this.

Mr. BEN-VENISTE. Let me say in summary, from what we have heard all day today, starting with Mr. Foren and others, that the requests that were made for the material were, by all accounts, appropriate, that there was nothing in the materials that came over that was secret or confidential, a smoking gun, a blockbuster, something that would, beyond the fact of Mr. Hale's public indictment, discredit Mr. Hale any further, as if that were possible.

The man had been indicted on three counts, and this was all public at the time. There were public accounts in The New York Times, in The Washington Post, and in the Arkansas Democrat that reflect Mr. Hale's view of the world as somebody who had been caught committing a fraud on the United States through the way he operated his Small Business Investment Company.

The fact that the White House had an interest in materials relating to the SBA investigation that was already transmitted to the U.S. Congress and likely the subject of some public discussion by reason of that fact, has, by all accounts by all persons who have reviewed this, including individuals from the Justice Department who will testify later in these proceedings, to have been an innocent and not inappropriate request.

In hindsight, clearly, again, things might have been done a different way. I'm sure, Mr. Eggleston, you wish you never saw that foot-high stack of documents. By the same token, I'm sure if there was something of real moment in that stack of documents, that my friend, Mr. Chertoff, was able to lift up in front of you, he could have also extracted that document and shown it to somebody and said here is an important document that shouldn't have been transmitted.

The fact that that didn't happen only reemphasizes the points that have already been made, and that is, that there was nothing of any moment in those materials.

As I understand it, Mr. Spotila has further enlightened us on the fact that other career people in the SBA had already reviewed the documents with that very thought in mind, that there ought not to be transmitted to Congressman LaFalce anything that was of a sensitive or inappropriate nature to be disseminated publicly; is that correct, Mr. Spotila?

Mr. SPOTILA. That is, and, in fact, we later learned from Congressman LaFalce that he thought our response was inadequate.

Mr. BEN-VENISTE. On that note, I will say that I have no further questions. Senator Sarbanes may well have some.

Senator SARBANES. Mr. Chairman, I just want to underscore for the record this deposition of Keith Wayne Mason who was not brought in. There's been speculation here about this October 6 meeting between the President and the Governor of Arkansas, Jim Guy Tucker, with a suggestion brooded about that people were finding out about these matters and the President was transmitting them to the Governor. Now, you can speculate all you want. You had a third person in that meeting, Keith Wayne Mason, who

was in the Intergovernmental Affairs Office in the White House. Let me just quote the questions and answers that were put to him from his deposition at page 46:

Question: At the October 6 meeting between the Governor and the President was there any discussion whatsoever relating to Madison Guaranty Savings & Loan?
Answer: No.
Question: At the same meeting was there any discussion whatsoever pertaining to Whitewater Development Corporation?
Answer: No.
Question: Was there any discussion whatsoever pertaining to the Resolution Trust Corporation?
Answer: No.
Question: Was there any discussion whatsoever relating to criminal referrals?
Answer: No.
Question: Was there any discussion pertaining to criminal matters related to the Governor?
Answer: No.

Now, you can speculate all you want. Here is the third party that was at the meeting. The questions were put to this third party, and here are the answers——

The CHAIRMAN. I would say to my friend and colleague that I am not speculating. As a matter of fact, I indicated that there was a young man who corroborated that these matters were not brought up. I mentioned that I am distressed that after you try to shelter the President from possible embarrassing meetings and situations, that that obviously was not done.

The fact that this young man indicated that he did not hear or witness any of these conversations is not in dispute. I indicated that from the beginning, but, again, if indeed, as stated, one of the purposes was, in addition to answering press inquiries, to keep the President from coming into situations that could be embarrassing, that certainly was not something that was undertaken, but——

Senator SARBANES. If you were hearing a lot of rumors and then I canceled a meeting with you, you're liable to regard that as giving substance to the rumor. I mean, you're raising how one acts under the circumstance and it becomes very difficult. You have the President meeting with one of the Governors of the States, this young man says nothing—I don't know whether he's a young man or not. I don't know him—but he gives his testimony, and we create this speculation around this meeting when the third witness, the independent witness, said nothing of this sort happened.

The CHAIRMAN. Senator, I understand your point, but they also brought up four conversations and/or meetings, they brought up the notes that were taken. I did not even touch on the issue of the meeting in which Mr. Lindsey now raises and asserts privilege, by the way, I am not a constitutional expert but I don't understand how, in what capacity Mr. Lindsey attends that meeting as an employee of the White House. He wasn't Counsel to the President so how does he assert that privilege. Does the fact that he was there mean that he is now immune from answering questions? It was a meeting of a defense team dealing with this. The question was, in my mind, whether Mr. Lindsey was inappropriately involved in gathering information related to these matters, to Whitewater, to the SBA, to Madison Marketing, and to the RTC heretofore.

So that's what lead this Senator to indicate that, given all this and the question—this is still a question that's open as far as I'm

concerned, there is a very real question relating to whether the claim of privilege is properly raised, and there is also a privilege issue related to certain White House documents that have not been turned over yet. We have to determine that. I don't think I want to do it at this point.

Senator SARBANES. This Committee in the past has indicated, on a number of occasions, that we recognize there are legitimate claims of privilege that can be asserted.

The CHAIRMAN. That's why I would hope——

Senator SARBANES. Therefore, it is a matter which requires a careful consideration because I would assume there is no one unprofessional enough to deny any claim of—in fact, we have sent letters down, when we made a request, recognizing that a privilege can be claimed, but I'm concerned about it.

Senator Faircloth raises this meeting out in Seattle, and Mr. Lindsey says the best he knows, the meeting that he must be referring to is a reception for the Arkansas people who are attending the conference. He knows of no meeting that was held separately by the President with Governor Tucker.

I mean, yet again, you get these innuendoes and suggestions, but they don't square with the facts. I just want to get at these facts.

The CHAIRMAN. I would ask our Counsels to meet to see if we can't resolve with the White House—and White House representatives are here—the question as it relates to the document, and whether the question of privilege is being properly raised.

If you can work out a manner by which to review that, fine. If not, we may have to take a different course of action.

Senator SARBANES. If it's appropriately raised, I think the Committee ought to recognize it.

The CHAIRMAN. If it is appropriately raised, and I think that what we have done before has been to try to give our Counsels the opportunity to review the document. That's what we have done. I think we have worked it out in almost every instance that I am aware of. I am not aware of us not——

Senator SARBANES. It didn't occur on this meeting that Mr. Lindsey was asked about here today nor in his deposition. That had not happened by counsel.

The CHAIRMAN. I am asking as it relates, number one, to the documentation, the memo of this meeting which is at the White House, for our Counsels to ascertain whether the issue of privilege is properly raised. Obviously, if it is properly raised, that will resolve the matter. If it is not, or if parts of it can and should be made available, why then, we would pursue that matter. I am going to ask our Counsels to see if they can resolve this with the White House as quickly as possible. We have done it in the past and I hope this Committee could continue to make that kind of progress. I want to thank the witnesses for their participation.

We stand in recess until 10 a.m. tomorrow.

[Whereupon, at 4:40 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, November 29, 1995.]

[Prepared statement and appendix supplied for the record follow:]

PREPARED STATEMENT OF WAYNE S. FOREN

FORMER SPECIAL ASSISTANT TO DEPUTY ADMINISTRATOR, ABA

NOVEMBER 28, 1995

Mr. Chairman and Members of the Committee, good morning. I am responding to your request to appear before the Committee to discuss Capital Management Services, Inc. (Capital Management) and its supervision and regulation by the Small Business Administration.

Capital Management was a privately owned and managed investment company that was licensed by the SBA as a Specialized Small Business Investment Company (SSBIC). During the 1980's, Capital Management increased its private capital and the SBA provided financial assistance to them. In 1993, it became apparent that Capital Management had committed fraud against the SBA. Therefore, the SBA accelerated its indebtedness and is now liquidating the company as a court appointed receiver.

When I referred Capital Management to the Inspector General for investigation, we did not know about:

- The fraud it committed against the SBA in 1986 and 1988;
- The related transactions between Capital Management and Madison Guaranty Savings & Loan; and
- The allegations made by David Hale regarding President Clinton and the Masters Marketing financing.

Small Business Investment Company Program

Under the Small Business Investment Company (SBIC) Program, SBA licenses privately owned and managed investment companies that provide risk capital to small business concerns in the form of equity and/or debt financing. SBIC's are one of two types:

1. *Regular SBIC's* assist any small business that meets eligibility requirements for the program, and
2. *Specialized SBIC's* assist only small businesses owned by persons who are socially or economically disadvantaged.

SBA provides financial assistance (leverage) to SBIC's in multiples of their private capital enabling them to provide greater assistance to small businesses. For example, an SBIC with $15 million in private capital is eligible for up to $45 million in leverage from SBA. Usually, this assistance is in the form of SBA guaranteed securities which are pooled with other like securities and pass-through pool certificates are sold in the public markets. SSBIC Preferred Stock sold to SBA is the exception.

As of October 1993, there were 280 operating SBIC's with private capital and leverage (in millions) as follows:

	LICENSEES	CAPITAL	LEVERAGE	TOTAL
Regular SBIC's	177	$2,072.8	$548.4	$2,621.2
Specialized SBIC's	103	191.3	311.7	503.0
TOTAL	280	$2,264.1	$860.1	$3,124.2

It should be noted that 82 SBIC's were bank affiliated with $1.6 billion of the private capital and only $121 million of leverage.

In addition to the 280 operating SBIC's, there were 188 SBIC's in liquidation with $526 million of SBA financial assistance.

Mr. Chairman, I served as the Associate Administrator for Investment (AA/I) during the period July 28, 1991 to October 22, 1993. In that position, I was the SBA Management Board Official who headed the Investment Division which is the organizational unit responsible for administering the SBIC Program. In February 1995, I retired from Federal service and I am no longer associated with SBA or the SBIC Program.

As the Associate Administrator for Investment, I was responsible for licensing, regulating, and examining SBIC's; providing leverage to them when requested; and liquidating SBIC's when necessary. About 100 SBA employees and 25 contractors were dedicated to administer the program. This is SBA's only centrally administered financial program which means there is no field structure.

When I assumed responsibility for this program, it had significant operational and structural problems. There had been 5 Congressional Oversight Hearings in 14 months. During the July 31, 1991, Oversight Hearings before the Senate Small Business Committee, Administrator Patricia Saiki reported on the progress made in

stabilizing the program and problem solving in program administration. She made a commitment to turn the program around.

My goal was to redirect and revitalize the program while managing the existing portfolio of SBIC's.

- We established an advisory council composed of industry practitioners and others which evaluated the program and made recommendations to improve it.
- Legislative changes were made on September 4, 1992, (P.L. 102–366, Title IV) allowing SBA to restructure the program. We developed implementing regulations which were finalized in April 1994.
- I initiated action in September 1991 to put SBIC's in the same position as banks and savings & loans by barring SBIC's from seeking protection under the Bankruptcy Code. In 1994, the Bankruptcy Code was amended barring SBIC's from seeking such protection.
- We took aggressive action to bring SBIC's into credit and regulatory compliance or to liquidate them.
- I encouraged existing SBIC's to expand their capital base and the formation of new SBIC's.

My goal was accomplished and these actions have proven to be a turning point for the program.

Capital Management Services, Inc.

I would like to turn my attention to Capital Management. It was licensed as a specialized SBIC on March 14, 1979, with $500,000 private capital. David Hale managed the licensee. During 1980's Capital Management increased its private capital to $1.4 million and obtained $3.4 million in SBA Leverage: $2 million of SBA Guaranteed Capital Management Debentures and $1.4 million in Capital Management 3 percent Preferred Stock sold to SBA.

In 1992, there were three Capital Management issues that needed to be addressed:

1. Exchange of several portfolio securities for National Building Supply Stock valued at $2.5 million,
2. $1.4 million request for leverage based on existing capital, and
3. $13.8 million capital increase resulting from donated noncash assets and related $6 million request for leverage.

In 1993, it became apparent that the licensee had defrauded SBA in 1988 and that it was attempting to do it again. Therefore, we accelerated its indebtedness and SBA is now liquidating the company. A chronology of significant events regarding these issues is as follows:

On June 1, 1992, Capital Management received 470,737 shares of Restricted National Building Supply (NBS) stock valued at $2.5 million in exchange for several portfolio securities which were reported to be of comparable value.

In September 1992, Capital Management increased its private capital by $13.8 million with donation of two noncash assets:

1. A pool certificate valued at $11.5 million backed by medical accounts receivables, and
2. 529,263 additional shares of NBS stock valued at $2.3 million.

Capital Management represented that these donated assets were free and clear of liens and encumbrances.

In October 1992, Capital Management submitted a Leverage Application for $6 million of Preferred Stock based on this capital increase. SBA has had a longstanding policy of not recognizing noncash capital increases for regulatory and leverage purposes until such assets are converted to cash. Therefore, the $6 million Leverage Application was returned. Capital Management was advised that its regulatory capital would increase only to the extent donated noncash assets were converted to cash. Information was requested regarding the donated assets including identification of donor (director or indirectly), its relationship to the licensee, consideration if any, and any related agreements. This was an unusual transaction and we wanted to be sure that it was legitimate and that the assets were actually free and clear of liens and encumbrances. We also wanted the assets converted to cash.

In December 1992, we accepted for processing a $1.4 million Leverage Application in Preferred Stock based on Capital Management's representations that:

- The medical receivables were free and clear of liens and encumbrances, and
- The NBS stock received in exchange for portfolio securities would be converted to cash in 120 days.

Were the previous capital increases legitimate, Capital Management would have been eligible for the $1.4 million additional leverage. Capital Management was advised that a Regulatory Compliance Examination of its operations would be required before any leverage was provided. Capital Management was reminded of SBA's policy of not leveraging capital increases from noncash assets until such assets are converted to cash.

On January 15, 1993, the examination field work was completed and the SBIC examiner discussed the findings with Mr. Hale and obtained his comments.

On February 19, 1993, we met with David Hale in my office at his request. He expressed a desire to reverse the capital increase from donated capital and the exchange of assets with an associate. He was told to submit his proposal in writing and that it would be considered. He was given no assurance that reversing the transactions would resolve the matters regarding the donated and exchanged assets.

On March 11, 1993, the report of the Compliance Examination was issued; however, the information regarding the noncash assets was not forthcoming. Further attempts in March and April 1993 to obtain this information were unsuccessful. Therefore, I decided to refer Capital Management to the Office of the Inspector General for an investigation with the hope that the requested information would be obtained.

On May 5, 1995, I briefed Administrator Designate, Erskine Bowles, on the Capital Management case and I advised him that I planned to refer the matter to the Office of Inspector General for Investigation. He agreed with the action and the referral was made the same day. Also we responded to Capital Management's April 20, 1993, letter. In this response we notified David Hale that the referral to the Inspector General had been made.

It is noted that the Office of Inspector General (OIG) referred the Capital Management case to the Justice Department.

On May 19, 1993, I notified Administrator Bowles that Capital Management defaulted on debentures and that we planned to accelerate the indebtedness and proceed to liquidate the licensee. The default was cured and we postponed this action.

On June 14, 1993, the Federal Bureau of Investigation (FBI) agent assigned to the case requested data from my staff. On or about this date, he commented that Capital Management provided the missing pieces of the Madison Guaranty S&L puzzle.

On July 20, 1993, the FBI obtained a Court Order to seize Capital Management's records which was executed the next day.

On August 3, 1993, we received information from the U.S. Attorney's Office, Eastern District of Arkansas, indicating the 1988 Capital increase and related transactions were fraudulent.

On August 9, 1993, I briefed Administrator Bowles on the fraudulent transactions, the impending indictment of David Hale, and our plans to place Capital Management in receivership.

On or about August 16, 1993, SBA accelerated Capital Management's indebtedness transferred the licensee to liquidation status.

On September 15, 1993, SBA was appointed receiver of Capital Management by Court Order from the U.S. District Court for the Eastern District of Arkansas. This action was with the consent of David Hale.

On September 21, 1993, I advised Administrator Bowles that we had taken Capital Management into receivership and that David Hale was expected to be indicted in the next 2 days.

I believe Capital Management was properly handled during my watch: The licensee was given every opportunity to provide the information that we sought, no financial assistance was provided to Capital Management, and we took appropriate steps to protect the interests of the Government.

SBIC Regulations (Sections 107.304 and 107.305) were clarified to place greater responsibility on SBIC's to verify use of proceeds and give SBIC examiners greater access to the small business concern's records.

Conclusion

In conclusion, much has been accomplished over the last 5 years to strengthen and improve the program including licensing and oversight of SBIC's. Capital Management would not qualify under the revised licensing standards. Also, I believe revised examination procedures could have disclosed this fraud earlier.

Capital Management is one of the most blatant cases of fraud in the program I have seen. Although some SBIC's have credit and/or regulatory problems, I do not believe Capital Management is typical of participants in the SBIC program!

Mr. Chairman, this concludes my prepared remarks. I will be happy to answer any questions the Committee may have.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

DATE: August 9, 1993

TO: Erskine B. Bowles
Administrator

FROM: Wayne S. Foren
Associate Administrator for Investment

SUBJ: Capital-Management Services, Inc.
Little Rock, Arkansas
License No. 06/06-5207

This is to inform you that there have been significant new developments concerning the above-referenced Specialized Small Business Investment Company (SSBIC) that may lead to a criminal indictment of the manager of the SSBIC, Mr. David Hale.

On August 1, 1993, the Office of Investment received a letter from the United States Attorney, Eastern District of Arkansas, concerning the Licensee's 1988 application for $900,000 in SBA leverage. In connection with the application, the Licensee is alleged to have engaged in a series of bogus transactions that caused SBA to believe that the Licensee had increased its private capital by $400,000 and that problem investments had been repaid. On the basis of the Licensee's false statements, SBA approved funding in the amount of $900,000.

We understand that the U.S. Attorney met with Mr. Hale and his attorney on August 6, 1993 and presented him with a draft indictment alleging that Mr. Hale and two other individuals defrauded the United States (SBA) in 1988. SBA was sent a copy of the draft indictment. SBA personnel from the Investment Division and the Office of General Counsel will meet with the FBI and the U.S. Attorney in Little Rock on August 10, 1993 to discuss the evidence against Mr. Hale and the SSBIC with a view towards placing the SSBIC into receivership.

We have also been informed by the Assistant U.S. Attorney that the licensee made false statements in a 1992 application for SBA leverage in the amount of $6.0 million. The 1992 request for funds was not approved. Finally, the FBI and the U.S. Attorney are investigating the Licensee's 1986 and 1983 leverage applications to determine if fraud was involved.

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF THE ADMINISTRATOR

April 11, 1994

Honorable Jan Meyers
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Meyers:

This is in response to your March 23, 1994 inquiry regarding my recusal from involvement in the Capital Management Services matter.

Throughout my tenure as Administrator of the Small Business Administration direct responsibility for the handling of all aspects of the investigation of and prosecution of any SBIC or SSBIC suspected of wrongdoing have been delegated to the career Investment Division and Office of General Counsel personnel who normally are involved in such cases. Capital Management has been treated in the same manner as all such other cases. I have never reviewed the Capital Management file.

It has been my practice at the SBA to recuse myself from any situation where there could be asserted even the remotest hint of a conflict of interest or perception of impropriety. To avoid even the appearance of impropriety, I verbally advised my staff in the late fall of 1993 that I intended to separate myself, even more thoroughly than an Administrator normally would be in an SBIC legal matter, from all aspects of the Capital Management matter. At the same time, I firmly instructed each of the staff that they were to pursue the investigation and prosecution of this matter vigorously, and that they were to cooperate fully, completely and quickly with any governmental agency investigating or prosecuting this matter.

On March 3, 1994 I memorialized my prior recusal in a memorandum to our Deputy General Counsel, who is our ethics officer as well as the career staff member who has been supervising our management of the Capital Management case from a legal perspective. I previously have provided a copy of that memorandum to the staff of the House Small Business Committee. A copy is attached to this letter for your information.

Very truly yours,

Erskine B. Bowles
Administrator

Attachment

CAPITAL MANAGEMENT SERVICES, INC.
LITTLE ROCK, ARKANSAS
License No. 06/06-5207

SUMMARY:

- Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.
- Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.
- We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

BACKGROUND:

- CMS is a Specialized SBIC that was licensed on 3/14/79 and it has $1.4 million in private capital and $3.4 million in SBA leverage.
- In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:
  - It accepted a pool certificate backed by medical receivables valued at $11.5 million and National Building Supply (NBS) stock valued at $2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.
  - Licensee received NBS stock valued at $2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.
- In October 1992, Licensee applied for $6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.
- On December 8, 1992, Licensee:
  - Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.

@ 30 pm

Jim Blair

- McD got called Hume to tell him that Hale had been to see him - McD told Hume that Hale had tried to get him to fabricate story about BC - JGT -

- Guth tried to get Hume to tell him what McD got - Hume wouldn't - Same

- Hughes Bennett Burgess - asked Guth whether agreement Hale, not McD

Agreement: we would prepare / McD would file

Corp Tax Records → demand →

1950-52 - tax returns

60 days | 30 / 90 days

2-1 CCA

Sen Hume Called Chrétien Rly —
Letter of transmittal → from accountant -
Date 2 - 3 days before the returns are filed →

BL011730

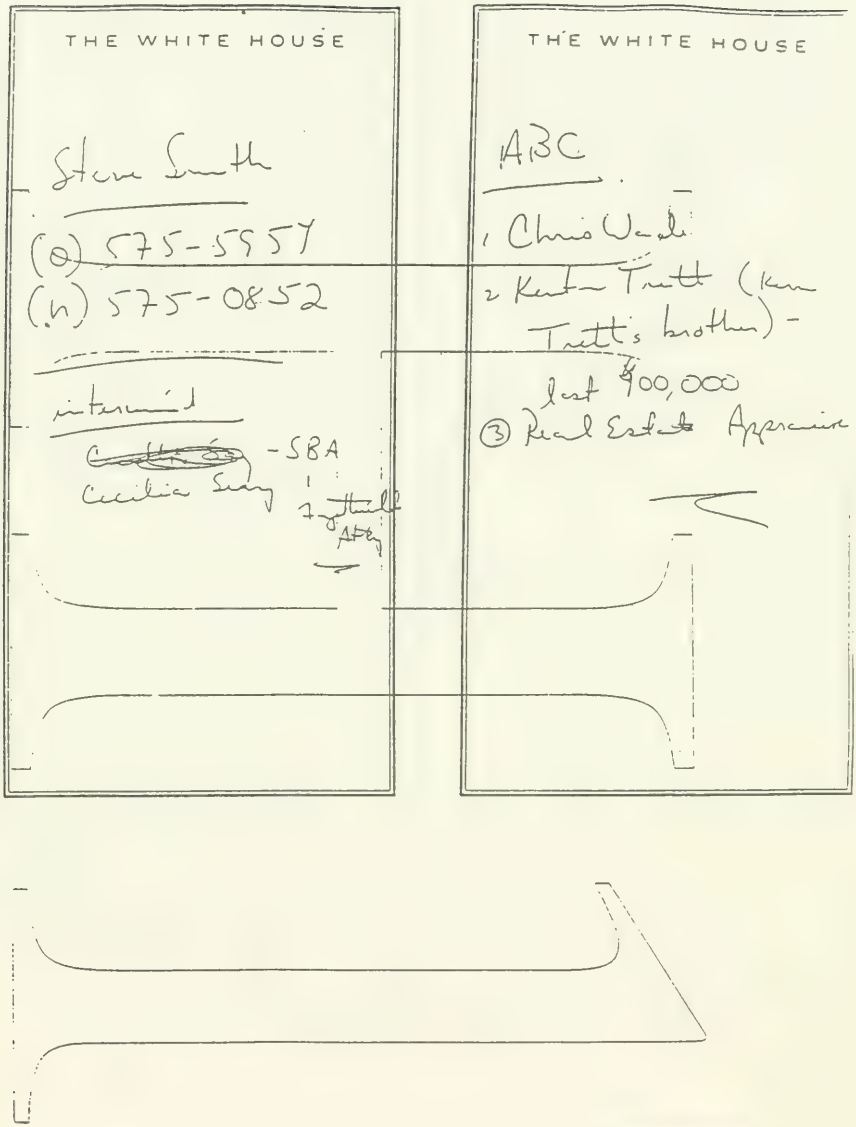
returns. Prepared for McD to file & sent to McCampbell & don't know if they McD. filed returns

Hutcheson Jackson - in charge of case → community behind

McD. might become target →

Claim Heard that $300,000 had been deposited in McD, account - jumped pretty high —

BL011731


THE WHITE HOUSE
Steve Smith
(o) 575-5557
(h) 575-0852
interned
-SBA
Cecilia Suey
THE WHITE HOUSE
ABC
1, Chris Wade
2 Kenton Truitt (Ken Truitt's brother) -
lost $00,000
③ Real Estate Appreciation

S 012379

A I don't think it was her directly, no.
Q Was it Ms. Williams?

Page 31

A Might have been.
Q And she might have been reporting on a conversation she had with Mrs. Clinton?
A Well, it would have been Maggie Williams, could have been Lisa Caputo, I just don't know.
Q Or maybe Ms. Thomases?
A I don't think so.
Q But they were reporting back to you after they spoke to Mrs. Clinton?
A Again, I don't know if they got it from Mrs. Clinton or from whom, but –
Q You said indirectly. That would mean someone would have spoken to Mrs. Clinton at one point.
A Well, the Clintons publicly have said, and this is why – that at some point, and I don't know if it was Susan McDougal, but the McDougals offered to take their Whitewater interests, and the Clintons indicated that they wanted to be released from the liability and there was no way to release them from the liability, or that the people who had the liability were not prepared to release them from the

Page 32

liability, and therefore they declined to give up their interest if they were still going to be on the liability.
Now, again, whether Mrs. Clinton said that publicly in her press conference, whether or not that's been reported through her press office, I don't remember, but that is basically the answer to that question.
Q And what would be the liability that you would be referring to?
A The Madison loan originally for $180,000, that was less now, would have been less in the mid-'80s, but was still significant, some amount.
Q So it's your understanding –
A The Madison loan is not the right name because it's not at Madison. It's whatever the – whatever the bank is where the original mortgage loan was.
MR. KRAVITZ: Is it the Bank of Kingston?
MR. GIUFFRA: Off the record.
(Discussion off the record.)
BY MR. GIUFFRA:

Page 33

Q So it's your understanding that Ms. McDougal was willing to let the McDougals take Whitewater off the Clintons off hands but not – strike that.
It's your understanding that the lender would not allow the Clintons to extinguish their liability by just transferring the liability and their ownership to the McDougals?
A My understanding was that the Clintons were told by somebody, I don't know who, that they would still be on the liabilities and that there was no way to – that the parties to the liability were not prepared to release them.
Q Now, was it your normal practice during 1993 if you wanted to communicate with McDougal to do so through Blair and Hueur?
A No.
Q But Jim Blair was someone who communicated with Hueur on some sort of a regular basis?
A I don't know that.
Q But Mr. Blair on occasion reported to you on what Mr. Heuer had told him with regard to what

Page 34

McDougal had told Hueur?
A I don't know that. I mean, in the meeting with Gerth, Blair came up and the matter came up. I probably called Jim Blair to find out what that related to. I don't know if – I would not say that Jim Blair reported to me unless I called him and asked him a question.
Q Yeah, but you would have – your practice would have been to call Jim Blair and have Jim Blair make an overture to Hueur in order to find out what was going on with regard to McDougal?
A No, I don't think I would say that.
Q What would be a fair statement?
A Again, I would ask Jim Blair what he knew. I don't think I would – I don't believe I ever used Blair to go to Hueur to go to McDougal. I think if Jim Blair's name came up or if Jim Blair was – later there's a reference to Jim Blair writing a letter to Hueur. I would call up Jim Blair and say, you know, did you write a letter to Hueur, what's this all about?
Again, it was part of my attempt to try to

Page 35

understand what these reporters were asking and to whatever extent, be prepared to respond to it.
Q Do you know Hueur yourself?
A Yes. Not well, but I know him.
Q During 1993 do you recall speaking with Mr. Heuer?
A No.
Q During 1993, approximately how frequently would you have spoken with Mr. Blair?
A Less than half a dozen times, I would think.
Q The third question is "did Hillary Clinton know about the Susan McDougal loan from Capital Management Services or the land purchase from International Paper prior to David Hale's indictment?"
Did you obtain the answer to that question?
A I don't remember. I mean I don't remember whether I – I don't know today. I don't think I could say as a fact today whether I knew – whether she did or didn't, so I don't think I ever got the answer to that.

THE WITNESS: I don't know. You're telling me that I met with Gerth on the 20th?

MR. KRAVITZ: Your notes indicate that.

THE WITNESS: Okay.

MR. KRAVITZ: Just so the record is clear, I think, Mr. Lindsey, you said you don't know when you had this phone conversation with Gerth and Engelberg, but you think it was within a few days before you actually met with them on September 20?

THE WITNESS: That's correct. Let me take a break.

(Recess.)

BY MR. GIUFFRA:

Q Mr. Lindsey, at the middle of this page, 12372, it refers to a tunnel at the capitol. What does that indicate to you?

A Well, I can tell you what Jeff Gerth told me David Hale told him.

Q What did Jeff Gerth tell you that David Hale told him?

A Which was that at one time – well, you have to know the state capitol, but it's sort of like

the U.S. Capitol in that there are steps going up and underneath there there is a short tunnel that's not very long but – so that you can go under and let somebody out, similar to the way the U.S. Capitol is, and that he, Jeff Gerth told me David Hale told him that he saw Clinton coming out of or going into the tunnel one time and the President – governor asked about are you going to be able to help my friend, Jim, something to that effect.

Q And the political event, what does that refer to?

A I don't think it refers to anything because that's different than the version that he told me in our meeting, so, you know, again I – there was not a political event in the meeting.

Q In the meeting, what did he refer to?

A I think the second one was the 145th Street trailer. This is where Clinton jogged down in his jogging clothes to 145th Street.

Q And this is also the story – this is also the claim that there was a leather chair in the 145th Street trailer –

A No, that's a different – that was when the President asked – or the governor asked to give the business to the Rose Law Firm.

Q Then it says "mall somewhat exculpatory." Do you know what that refers to?

A Well, I can tell you again in the longer meeting, he said that they met in the mall, the President, then governor made some reference to do you know what Susan McDougal did, and David Hale supposedly said what are you talking about, and Bill Clinton said you ought to ask Jim. Again –

MR. NUSSBAUM: This is Gerth reporting what Hale reported on what Clinton was alleged to have said?

THE WITNESS: You have 11 or 12 pages of notes that reflect what I actually remember him saying.

BY MR. GIUFFRA:

Q This is what use Susan McDougal made of the money, the $300,000?

A I think that's what that was reference to, yes.

MR. KRAVITZ: Can I interject? Are you now testifying about what Mr. Gerth told you on September 20 in person or about what Mr. Gerth told you in this telephone conversation?

THE WITNESS: No, no, no, again –

MR. KRAVITZ: I think this is all in reference to this one page of notes, which is S 12372, but that may not be what you're testifying about.

THE WITNESS: No, that's right. Bob asked me what I knew or what I thought that referred to, and in order to respond to that, I have to refer to the September 20 meeting because that's when my notes reflect I learned much more. Again, I don't remember anything about either the September 20 meeting or this telephone call other than what's reflected in the notes, so I thought I was simply just repeating back to him what my notes reflect from the September 20 meeting.

BY MR. GIUFFRA:

Q During 1993-1994 did you have any discussions with anyone about the $2000 a month retainer between the Rose Law Firm and Madison?

A Yes.

Q Who do you recall discussing that retainer with?

A I don't remember.

Q Did you ever ask Mrs. Clinton about that retainer?

A I don't think specifically.

Q Generally?

A Well, no, I don't remember asking Mrs. Clinton. At some point I learned – "retainer" is not actually the right word because it wasn't a retainer, it was an advance against billings, and I learned that they had returned at the end of the period the amount of money in excess as to what they had actually billed.

Now again, I don't – I can't tell you today who I learned all of that from, but in the course of all of this, I learned that, you know, there was a period of time where they received a $2000 a month advance against billings and when they ended their representation, they returned the excess.

(51)

Q For the entire amount that had been paid?
A My understanding was the excess of the entire amount over their billings.
Q Did you ever discuss with Mrs. Clinton how the Rose Law Firm was retained by Madison?
A No.
Q Did you ever discuss with President Clinton whether he had asked McDougal to retain the Rose Law Firm?
A I have some vague memory that I asked him one time about the jogging over and the leather chair story, and he said that it didn't occur.
Q So he told you –
A I think that's right.
Q So he told you he had nothing to do with Madison retaining Rose?
A I don't know I can say – I think I asked him will he – I think it was a joking reference to his – that McDougal was making a big deal about sitting in his new leather chair and having been jogging and being sweaty.
Q When did you first learn that a subpoena

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had been authorized with regard to certain premises of Mr. Hale?
A I think from Jeff Gerth.
Q Next document, 12373, 12374.
A Okay.
Q If you could just read across the top on that.
A "Mike Isakof, Chuck Babcock, S. Schmidt. *Q Washington Post reporters?*
A Yes. "1991 tax return. McDougal-meeting with Hale did not occur. Funds used to purchase IP property. What did we base the reconstruction on?"
Q Let me ask a question. The reference to "McDougal," dash, is that McDougal told you or you advised him?
A No, this is a conversation I had with them. This was the meeting that's reflected I believe in the two-page typed memo that you showed me
dated October 11 or 12.
Q October 9.
A Well, the meeting was October 9 and the date on the memo I think is the 12th.

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Q That's correct.
A Okay. I think they – I think I told them that the meeting with Hale did not occur. Again I don't think – I think this was not that I talked to McDougal but that I was simply answering their questions. I may have written down McDougal because
they were telling me that –
Q That was based on your conversation with the President?
A Right. And I guess "funds used to purchase IP property" was a short way of maybe my answer to their question that the Clintons did not know that funds – that money was used to purchase land in the name of Whitewater.
"What did we base the reconstruction on" and then it says "records that HRC had. Had some corporate records, ledgers, some work papers, some escrow contracts." That's the Lyons report.
Q The next entry?
A "Other than loans," then there's "$30,000." Then there's something and it says "fiscal year 1981."

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Q Do you know what that refers to?
A No. Then there's "$22,860 something," maybe $8,800. "Madison Bank $30,000. Security Bank
of Paragould." I can't read what's written across.
Q Do you know what that reference refers to?
A No. All of this – again, The Washington Post never was comfortable with the Lyons report and
the conclusions of the Lyons report or the analysis of the Lyons report, and all of this was some way of their, I think, trying to tell me why the Lyons report was not an accurate reflection or they didn't understand the Lyons report to be an accurate reflection, and these were just, you know, again my writing down snippets of their basically making an argument that they should be entitled to see all of the documents that made up the Lyons report so that they could do their own analysis of it.
So again, this was their way of trying to convince me, I think, that the Lyons report didn't hold together and that therefore we should make a more complete disclosure.
Then the last one is "income tax benefits.

Page 55

Madison Marketing." Again I don't know what that refers to:
Q The next page?
A "1989, '90, '91 tax returns, 18,000 land sales, Exhibit A, page 2." Again, I think they were comparing the tax returns to the – I think Exhibit A, page 2 of the Lyons report and it was just part of their argument why they didn't jibe.
Q Do you have any understanding as to whether Hale's allegations against Clinton, if true, would constitute a crime?
MR. NUSSBAUM: Objection. Why would – how is that a fact-gathering exercise for you to ask him now for his legal analysis?
MR. GIUFFRA: Well, if someone had advised him that it was a crime, then actions that were taken from the point he was advised that it might constitute a crime would reflect that. If he was advised by someone that it was not a crime, then his actions might be colored by that.
MR. NUSSBAUM: Do you have any understanding?

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or not, and that I don't remember. There was one of them and I'm drawing a blank on whether that's Larry Case or not.

Q And what were the circumstances under which that employee was fired?

A He was making calls to the contras.

MR. NUSSBAUM: That's a good segue to another scandal that I like a whole lot better.

THE WITNESS: On state telephones and running up large bills, but I can't frankly remember whether that's Larry Case or not. He later sued Clinton. Anyway, that could be Larry Case. I'm just drawing a blank on that. "Larry Case bugging her. Rose Law Firm represents. Clinton's personal life. Larry Nichols."

BY MR. GIUFFRA:

Q Who is Larry Nichols?

A Now I'm confused whether Larry Nichols – I think Larry Nichols is the former ADFA employee, I believe, who was making calls to the contras, not Larry Case.

Q Make sure the record is clear on that one.

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MR. KRAVITZ: We don't want anyone to get sued over this transcript.

THE WITNESS: So anyway, well, I think Larry Nichols is the former ADFA employee who filed the lawsuit during the 1990 campaign and both Larry Nichols and Larry Case though, I believe, had been out there stirring up some of these stories.

I think Larry Case may consider himself to be an investigator.

BY MR. GIUFFRA:

Q And from looking at these cards, what is your best recollection of the allegations Mr. Hosenball was recounting?

A With respect to that last deal?

Q Yes.

A I have no idea.

Q What about the earlier, the second card?

A I think he was trying to determine when Clinton learned about Lassiter's drug use in relation to Lassiter's representation or participation in various bond issues that the state of Arkansas put out.

Page 98

Q During '93-94 did you ever speak to the President about Dan Lassiter?

A '93-94? I don't remember.

Q Do you recall ever speaking to the President about Dan Lassiter?

A I remember there was an issue where they claimed that Bill Clinton gave Dan Lassiter a pardon. This was Governor Clinton, not President Clinton.

Q It was during the campaign?

A Was it during the campaign?

Q I'm asking you.

A I don't remember. There was an issue at some point in the press about Dan Lassiter getting a pardon, and I may have asked the President did he ever give Dan Lassiter a pardon. A governor has a limited ability in connection with federal pardons, I believe, to allow a person to get a gun – to get a hunting license. The governor can't give him his gun back. But if he gets his gun back from the federal government, I think the governor can then give a pardon and that would allow him to get a hunting

Page 99

license.

Q Let me ask you – I'll show you the next document, 12390. Is this the back – 12390, is this the back of these three cards?

A I have no idea.

MR. GIUFFRA: Do you know, Counsel?

MR. NUSSBAUM: I don't know but it wouldn't – it's hard to imagine it would have worked that way. Well, maybe it could have. I don't know.

BY MR. GIUFFRA:

Q Now, the top of 12390, it says page 2 and at the top of 12389 it says page 3. Do you know if there's a page 1?

A 1, 2 – if what you're saying is right, 1, 2, 3 (indicating).

MR. NUSSBAUM: Didn't your man in Little Rock look at these cards?

THE WITNESS: All of this relates to the same matter of Lassiter and Lassiter participating in Arkansas bond issues. And again –

BY MR. GIUFFRA:

Q Why don't you try to read through this

Page 100

document 12390 and see if you can make some sense out of that.

A "Don Birdsong," who I don't know who that is, "Roger just been to New York. Not through talking." I don't know what that means.

Q Is that Roger Clinton that he's referring to?

A I have no idea.

Q Page 2?

A Page 2. "March 10, 1992, sensor, violating," violate or violation. "Excessive markup. Untrained" it looks like. And then I can't read the next work. "NASD 1994. Everyone knew. If he had known, reconsider. Complaints were made to people in governor's office. Stevens. Lapse of procedure. Louisiana State Racing Commission. Louisiana State Police. July 1993. Use and distribution of cocaine."

Q Do you know what this page refers to?

A I believe this top part refers to Lassiter.

Q What about –

A Lassiter & Company, excuse me.

Page 101

Q What about Lassiter & Company?

LAW OFFICES OF
ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION
120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 375-9131

CLIENT: 93253

MADISON GUARANTY SAVINGS/LOAN
ATT: JOHN LATHAM, PRESIDENT
1ST AND MAIN
LITTLE ROCK, AR 72201

JANUARY 30, 1985

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0400141) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1985 BY H. P. CLINTON, W. KENNEDY, S. HASKEY AND D. FITZHUGH:

MATTER: 1 - STOCK OFFERING

REVISE AGREEMENT; BEGIN DRAFTING OF MINUTES AND OFFERING CIRCULAR; REVISE OFFERING CIRCULAR; CONFERENCE WITH J. LATHAM AND D. FITZHUGH; RESEARCH ARKANSAS SECURITIES AND FHLB D-T REGULATIONS; REVISE MINUTES; REVIEW AND REVISE OFFERING MATERIALS; CONFERENCES WITH S. HAWKINS, J. KENNEDY, P. JONES, S. HASKEY, H. CLINTON, J. LATHAM AND D. FITZHUGH; DRAFT AND REVISE LETTER TO C. HASKEY.

TOTAL ATTORNEY FEES $2,300.00

DISBURSEMENTS

LONG DISTANCE TELEPHONE CHARGES		5.00
XEROX COPIES		13.50
DISBURSEMENTS TOTAL	$18.50	

TOTAL MATTER 1: $2,318.50



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FAX TRANSMITTAL SHEET

PLEASE DELIVER THE FOLLOWING PAGES TO:

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COMPANY: DATE: 1/7/94

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Director of Media, Public & Govt. Affairs

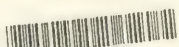
FAX: 501-290-4028

PHONE: 501-290-7232

NUMBER OF PAGES (INCLUDING COVER SHEET): 3

→ AIRC - cancel to the Clinton
→ label mail - a booklet by June
→ letter - not sure - will check -
→ plan to [illegible] - mail / accompanied - they would be very talking to the press get him [illegible] in his weekend - not in his interest -

Feeding you like family.™



Conversation / Meeting
w/ J. Blair + J. McD.

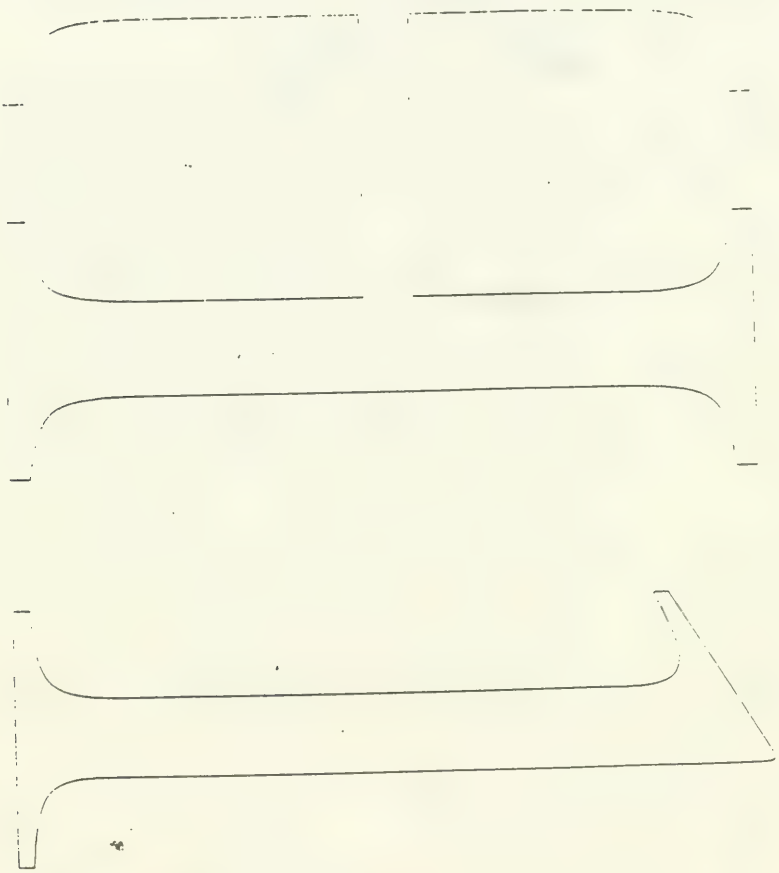
McD arriving then
Blair discussed
N.Y. Times for libel

BC flew

R.D. Rudolph – discussion –
w/ McD – gd → R.D.
had a conv.
w/ BC as well as Blair –
upcoming mtgs – that
Clinton staff had w/
McD having talked
and Clinton's
Blair – "henchmen" – how
you going to get this done –
stream the this – you
ain't got a head to know
and I ain't going to talk
about it –

S 012378

Neil Eggleston said the additional information is at SBA and is approximately a foot high. He has a call in to SBA to find out if it contains reference to either the President or Hillary. He can obtain a copy of the documents if it appears necessary but does not believe it is problematic.



S 011399

ERSKINE BOWLES
6725 Old Providence Road
Charlotte, North Carolina 28226

December 27, 1995

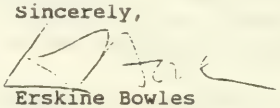
Hon. Alfonse M. D'Amato
United States Senate
Washington, D.C. 20510

Dear Senator D'Amato:

On December 21, 1995 I received a letter of the same date from Congresswoman Jan Meyers, copy enclosed.

Enclosed is my response to the Congresswoman's letter. I respectfully request that this letter or a copy of it be included in the record of the proceedings of the Senate Whitewater Committee being conducted under your Chairmanship.

Sincerely,



Erskine Bowles

EB/dca
Enclosure

JAN MEYERS, KANSAS
Chair

Congress of the United States
House of Representatives
104th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

December 21, 1995

BY HAND

Hon. Erskine Bowles
Deputy Chief of Staff
for White House Operations
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Bowles:

I have been advised that you recently appeared as a witness before the Senate Whitewater Committee, and that your testimony concerned those aspects of the Whitewater matter which involve the former SBA-licensed SSBIC, Capital Management Services, Inc. (CMS). I have also been advised that much of your testimony before the Senate centered around the question of your alleged recusal from the Whitewater matter while you served as Administrator of the SBA.

After reviewing your testimony before the Senate with my staff, and in light of your letter to me of April 11, 1994 proclaiming your recusal, I have to say that I am shocked by your actions. It is clear from the testimony of former SBA officials before the House Banking Committee this past August, and from your own and others' testimony before the Senate Whitewater Committee three weeks ago, that you were attempting to have it both ways -- publicly proclaiming your recusal, while at the same time providing information to officials in the White House about what the SBA and the House Small Business Committee were doing concerning their investigations of CMS.

Mr. Bowles, I view your letter to me of April 11, 1994 as highly misleading. Your representations to me concerning your alleged non-involvement in the CMS matter represent, at the very least, an ethical breach that I intend to bring to the attention of others, including the Office of Government Ethics.

You should know that I am also forwarding copies of this letter to Senator D'Amato and Representative Leach so that they may include my views of your actions in the respective records of their committees' proceedings.

Sincerely,

Jan Meyers

Jan Meyers
Chair

cc: Hon. Alfonse M. D'Amato
Hon. James A. Leach

ERSKINE BOWLES
6725 Old Providence Road
Charlotte, North Carolina 28226

December 26, 1995

Hon. Congresswoman Jan Meyers
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Meyers:

During my tenure as SBA Administrator, I enjoyed and appreciated the working relationship with you and your staff. I was, therefore, astonished and distressed by your letter of December 21st concerning my testimony and the testimony of SBA career employees relating to the SBA's handling of the former SBA-licensed SSBIC, Capital Management Services, Inc. (CMS).

Both in my prior experience in business and in this Administration, I have always tried to do what is right. I take very seriously the suggestions in your letter that on the CMS matter I have not done so. Accordingly, I have reviewed again, in great detail, the transcript of my appearance before the Senate Whitewater Committee.

This transcript establishes the following:

1. All my actions regarding CMS were proper. The following exchange of the Committee with Wayne Foren, the career SBA official in charge of CMS, is instructive (Tr. 49):

The Committee: Is it correct, Mr. Foren, that in all of your dealings with Mr. Bowles on this subject [CMS] that you do not believe that he did anything that was inappropriate?

Mr. Foren: I find nothing inappropriate in anything he did.

The Committee: And you did nothing inappropriate in your view?

Mr. Foren: Absolutely.

The Committee: No one put any pressure on you out of fear or favor anticipated that you ought to go easy on Judge Hale because he had this supposed connection in Little Rock?

Mr. Foren: No.

The Committee: To the contrary, you were advised to go ahead, treat this case as you would any other case and do it speedily?

Mr. Foren: Absolutely.

The Committee: The absolute opposite of any fix or consideration to be given to somebody for improper purposes.

Mr. Foren: That is correct.

The Committeee (Tr.54): So if I understand, Mr. Foren, the substance of what you are telling us here today that, in connection with Mr. Bowles' activity, you regarded it to be, to the best of your knowledge, appropriate in all respects?

Mr. Foren: That is correct.

The Committee (Tr.55): I ask you this, Mr. Foren, now knowing all the conversations that have gone forward, does this strike you as exactly an appropriate way in which a matter like this [CMS] should be handled?

Mr. Foren: Yes.

The Committee: Mr. Shepperson [Mr. Foren's Deputy].

Mr. Shepperson: Yes, it does.

As the undisputed testimony of these nonpolitical career SBA employees demonstrates, what I as its Administrator did on CMS was right, in all respects. The real credit for the SBA's successful handling of the CMS matter goes to the career employees since they, together with Office of General Counsel personnel, handled all aspects of the investigation and prosecution. As both Mr. Foren and I testified, my role was limited: I was informed about CMS only to the extent appropriate for someone in my position as Administrator. Tr. 37, 78-79.

2. Despite my limited but proper role in CMS, I subsequently recused myself from the CMS matter. Wayne Foren testified that I recused myself from the CMS matter "after this

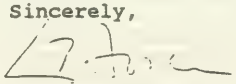
series of memorandums", the last memorandum being about September 21, 1993. Tr.64. Mark Stephens, Esq., a career member of the SBA legal department and the attorney investigating CMS for the SBA, testified in deposition that I recused myself from CMS. Tr.53. As I told the Committee, in November, 1993, when I read in the newspapers that Judge Hale had alleged a purported connection with the President, I decided to recuse myself from CMS. I did so for two reasons, one of which was "so there would not be even a perception of impropriety." Tr. 32, 65.

After my recusal in November, 1993, I never, never "provid[ed] information to officials in the White House about what the SBA and the House Small Business Committee were doing concerning their investigation." The allegation in your letter to me that I did so, I most respectfully but firmly submit, is wrong. It is not true. It never happened.

To the contrary, about the time of my decision to recuse myself from CMS I learned, after the fact, that some documents had been sent from the SBA to the White House. It is undisputed that I immediately told the SBA employee who had sent the documents to the White House to call the Justice Department, tell the Justice Department what had been done, and "to see if it's okay." Tr.33, 77. He did so, and the documents were returned. The point is, I did not know the documents had been sent; I never approved or authorized providing any information about CMS from the SBA to the White House after my recusal nor did I do so myself. There was no contrary testimony at my appearance before the Senate Committee. Moreover, the testimony before the Committee concerning my recusal from CMS was completely consistent with my letter to you dated April 11, 1994.

Congresswoman Meyers, I would have preferred that as a matter of professional courtesy, you would have discussed this matter with me before you wrote this letter and disseminated it to others. I would have been pleased to discuss any concerns you may have had with you. During my tenure as SBA Administrator, I fulfilled my responsibilities as to CMS and other matters ethically and in complete accord with all professional obligations.

Sincerely,



Erskine Bowles

cc: Hon. Alfonse M. D'Amato
Hon. James A. Leach

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, NOVEMBER 29, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Good morning. I'm going to ask our two witnesses, would you stand for the purposes of the oath.

[Whereupon, L. Jean Lewis and L. Richard Iorio were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Please be seated. Ms. Lewis, I understand that you and Mr. Iorio both have statements to give.

Ms. LEWIS. Yes, sir.

The CHAIRMAN. We would be very pleased to receive those statements.

Ms. LEWIS. Thank you.

Senator SARBANES. Mr. Chairman, do we have these statements? I have Mr. Iorio's. I don't seem to have hers.

The CHAIRMAN. I have a statement here—no.

Senator SARBANES. Oh, here it is. When did we receive this statement?

The CHAIRMAN. Last evening.

Ms. Lewis, would you proceed.

SWORN TESTIMONY OF L. JEAN LEWIS
FORMER SENIOR CRIMINAL INVESTIGATOR
KANSAS CITY, MISSOURI OFFICE, RTC

Ms. LEWIS. Yes, sir. Thank you, I will.

Mr. Chairman, distinguished Members of the Committee, my name is Jean Lewis. Until September 29, 1995, I was a Senior Criminal Investigator with the Kansas City, Missouri office of the RTC. This will be a summary of my written statement.

As you know, this is not the first time I have testified about the failure of Madison Guaranty. I provided information and testimony to the Independent Counsel. I was interviewed for 2 days by staff

working for the House Banking Committee. Subsequently I testified for 2 days before that Committee, and I was deposed for 2 days by staff reporting to this Senate Committee prior to appearing here today.

Let me begin my testimony by stating that only by a fluke of history do I find myself at the center of what is now known as the Madison/Whitewater matter. I did not ask to be the lead RTC criminal investigator in this case. It was assigned to me. This investigation, along with the publicity now surrounding it, have caused me nothing but personal and professional grief, and it has adversely affected both my health and my career.

When I investigated financial institutions in Arkansas, including Madison, which culminated in the production of 10 criminal referrals, I was doing my job. As I said in my opening statement to the House Banking Committee:

> Never did I expect a routine investigation of a failed savings and loan in Arkansas to come to this. But as a public servant, working on behalf of the depositors and taxpayers of this country, it is my job to follow the evidence wherever it leads. The public must have faith in their Government institutions. Those who place their savings in banks and savings and loans across the Nation expect their money to be safe. When powerful people, including high officials, violate their public trust to enrich themselves, they not only break the law but they betray the American people.

During the investigation of Madison, we uncovered rampant bank fraud, including check kiting, resulting in our submission of 10 criminal referrals to the U.S. Attorney in Little Rock, Arkansas and the FBI.

For those who don't know, a criminal referral is a formal written statement to the U.S. Attorney and the FBI summarizing the evidence of suspected criminal conduct and the criminal laws which may have been violated. It also identifies the persons suspected of criminal conduct, as well as those believed to have witnessed or benefited from that conduct.

To date, the Independent Counsel's investigation of Madison—launched by these criminal referrals—has resulted in numerous guilty pleas and indictments. Furthermore, I believe there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison.

The RTC's criminal investigation of Madison began after The New York Times published an article Sunday, March 8, 1992, alleging that Madison funds had been diverted for the benefit of Whitewater Development Corporation, a real estate venture whose partners were James and Susan McDougal, and Bill and Hillary Clinton. The article further alleged that these actions may have caused a financial loss to Madison.

At the time The New York Times article appeared, the RTC's Criminal Investigation Unit in Tulsa, Oklahoma was responsible for investigating criminal allegations involving failed institutions in Arkansas, among other places. The Tulsa office received two requests to determine whether Whitewater had, in fact, caused a loss to Madison. The initial request was from RTC Regional Investigations staff in Kansas City, Missouri based on inquiries from a since-deceased senior investigative specialist. The second request came from the director of the Tulsa RTC office.

Investigator Wyatt Adams, who had implemented a 1991 civil investigation of Madison, was asked to provide the initial response.

RTC staff in Kansas City and Washington were preliminarily advised that Madison had made no loans to Whitewater or the Clintons, although the McDougals had borrowed heavily from Madison and defaulted on several loans. Tulsa RTC investigators were instructed by senior regional investigative staff in Kansas City to continue reviewing Madison records that were kept in a Little Rock warehouse.

In March 1992, my involvement in the investigation began as a result of Mr. Adams discovering that a former Madison employee, Patricia Heritage, had admitted fabricating Madison board minutes at the direction of its former president, John Latham. Ms. Heritage, who received her law degree after leaving Madison, was later hired by the Rose Law Firm.

Since she was acting as counsel to the RTC in litigation involving other Arkansas and Oklahoma thrifts, I was instructed to review records provided by Mr. Adams and meet with the FBI to determine whether criminal action had been considered or taken against her. I learned no such action had been considered because Ms. Heritage had been acting at the direction of Madison's former president.

In April 1992, I then joined Mr. Adams in reviewing the Madison records stored in a downtown Little Rock warehouse, where he had already discovered a Madison checking account in the name of Jim and Susan McDougal and Whitewater.

As a standard investigative procedure, we began tracking the flow of funds through the two accounts which led to several additional Madison checking accounts. The flow of funds among accounts revealed an elaborate check kiting scheme floating worthless checks among specific accounts intended to create the appearance of legitimate balances.

This particular scheme of kiting transactions included the accounts of Flowerwood Farms, Tucker-Smith-McDougal, Smith-Tucker-McDougal, Madison Marketing, the McDougals' personal checking account, and Whitewater. Jim Guy Tucker was a business partner of Jim McDougal's and later became Lieutenant Governor and then Governor of Arkansas. Stephen Smith was a business partner of both Mr. Tucker and McDougal, and a former aide to Governor Clinton.

Many of the checks we traced had the word "loan" written on them, but the checking accounts did not generally maintain sufficient funds to cover the so-called loans. A substantial number of the checks written between these and other McDougal-controlled companies frequently created a series of false deposits that simply gave the appearance of available funds. The money paid from these accounts included various real estate and loan payments to, among others, the Bank of Cherry Valley and Madison Bank and Trust.

The scheme also provided money to Jim McDougal, Chris Wade, Larry Kuca and the Bill Clinton Political Committee Fund. Chris Wade was a real estate developer who marketed the Whitewater property for the McDougals and the Clintons. The documents show contributions were made payable to Bill Clinton individually and the Bill Clinton Campaign Fund and then deposited to the Bill Clinton Political Committee account at the Bank of Cherry Valley.

Also, from time to time, outside funds were deposited into one account and then systematically deposited to other McDougal-controlled accounts. Those outside funds came from Madison, Stephens Security Bank, and David Hale's Capital Management Services.

In early August 1992, having collected substantial evidence of bank fraud, it was then necessary to prepare a criminal referral that would summarize the evidence and findings uncovered, and provide that information to the Justice Department, specifically the U.S. Attorney's Office in Little Rock, and the FBI.

However, the RTC's Tulsa field office, where I worked, was closed in July 1992 and several of its functions, including the Investigation Unit, were merged with the Kansas City Regional office. RTC investigation management offered, and I accepted, a transfer to the Kansas City office. This reorganization caused a 6-week delay in the final review and completion of the first Madison criminal referral. I say "first Madison criminal referral" because several additional criminal referrals were to follow.

The first Madison referral, which was assigned the number C0004, was supported by substantial detail and extensive exhibits. It was completed on August 31, 1992 and submitted to the FBI and U.S. Attorney by Kansas City RTC senior management in the Investigation Unit on September 2, 1992 in full compliance with RTC procedures and guidelines.

Among other things, the referral provided specific check numbers, dates, account names, account balances, particular uses of funds, and the names of individuals and entities involved in various check kiting schemes. The referral also stated that among those who stood to benefit from this activity were Stephen Smith, Jim Guy Tucker, then-Governor Bill Clinton and Mrs. Clinton inasmuch as "the overdrafts and loan transactions, or alleged check swapping and kiting, between the combined companies' accounts ensured that loan payments and other corporate obligations were met, thus clearly benefiting the principals of each entity."

Previously submitted referrals involving Arkansas institutions had consistently resulted in letters of acknowledgment from the FBI. By late December 1992, the Investigation Unit had not received an acknowledgment on the Madison referral. In order to follow up, I contacted the Little Rock FBI. Shortly thereafter, the Investigation Unit received a brief letter from the FBI acknowledging receipt of the referral and directing further inquiries to the U.S. Attorney's Office in Little Rock. The letter made no reference to the disposition of the referral and, at Mr. Iorio's recommendation, I placed the matter in my pending file for later followup. At the same time, I recommended that my supervisors consider further investigation into the fraud at Madison because of the magnitude of the fraud.

In May 1993, the Madison investigation continued with Mr. Iorio's and Mr. Ausen's decision to pool the investigative resources as this was the most effective means of addressing the indiscriminate level of fraud at the thrift. As lead investigator, I was asked by Mr. Ausen to coordinate the team effort.

In May 1993, I also made a verbal inquiry to the U.S. Attorney's Office in Little Rock regarding the referral. I was told it was not in their computer system, so I sent a written inquiry to Acting U.S.

Attorney Richard Pence. His response letter indicated he was unaware of the referral's status and suggested I contact the Executive Office for U.S. Attorneys at the Justice Department in Washington, DC. His letter further stated that former U.S. Attorney Charles Banks had forwarded the referral to the Justice Department in Washington sometime in October 1992, having concluded that further prosecution of Madison matters would present a conflict of interest for his office.

On May 13, 1993, nearly 9 months after this first referral had been sent to the U.S. Attorney's Office in Little Rock and the FBI, I contacted the Justice Department, specifically the Executive Office for U.S. Attorneys. This began a 5-month odyssey of telephone calls that were required to determine the final status of C0004.

My initial contact at the Justice Department recalled the referral had been submitted as a special report for the attention of Attorney General William Barr. Further efforts tracked the referral through seven different offices at the Justice Department. The referral was finally located in the Fraud Section of the Justice Department's Criminal Division in late June 1993 and was returned to the Executive Office for U.S. Attorneys for review.

On June 23, 1993, I learned the referral would be returned to the U.S. Attorney in Little Rock. This was based on an internal Justice Department memorandum stating that there was no basis for recusal of the U.S. Attorney and no apparent conflict of interest. Nine days later I learned the referral had arrived back in Little Rock, but that the Acting U.S. Attorney intended to "let it sit" until the new U.S. Attorney-designee, Paula Casey, took office.

Ms. Casey was sworn into office as U.S. Attorney the second week in October 1993. On October 27, 1993, more than a year after its submission, Ms. Casey declined RTC criminal referral number C0004. In other words, Ms. Casey refused to further investigate the matters raised in the referral. On November 9, 1993, 13 days after rejecting the referral, Ms. Casey recused herself from the case. If there was a conflict requiring her to recuse on November 9, 1993, then it would seem there was a conflict when she declined the referral a few days earlier.

Nonetheless, rather than investigating further, Ms. Casey rejected the referral stating there was "insufficient information to sustain many of the allegations." But Ms. Casey did have additional information, namely, nine new criminal referrals submitted to her on October 8, 1993. However, Ms. Casey stated she was concurring with the opinion of Justice Department attorneys in Washington who had concluded this matter prior to her coming to the U.S. Attorney's Office in Little Rock. But her rejection was in direct conflict with information I had received from the Justice Department in Washington, and the U.S. Attorney's Office, when the referral was returned to Little Rock 4 months earlier.

Between May and August 1993, the Madison criminal investigative team reviewed and researched several transactions involving insider abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records and board minutes, chronic overdraft status of various subsidiaries, joint ventures and real estate investments, regu-

latory violations of investments in subsidiaries, wire fraud, and illegal campaign contributions.

As a result of this investigation, nine additional referrals were prepared alleging criminal violations of several sections of the United States Code relating to bank fraud, conspiracy, false statements, false documents, wire fraud, aiding and abetting, and misuse of position.

These nine referrals identified multiple suspects, including the Bill Clinton Political Committee Fund, James B. and Susan H. McDougal, Jim Guy Tucker, Chris Wade, and several former Madison officers and borrowers. As I will discuss later in my testimony, James B. and Susan H. McDougal and Jim Guy Tucker have been indicted and Chris Wade has entered a guilty plea.

Suspects on some of the referrals overlapped as witnesses on others, reflecting the elaborate nature of Madison's relationships with some of its borrowers. Jim Guy Tucker and former Madison director Charles Peacock, III were among those who fell into this category.

The referrals also identified additional witnesses with potential knowledge of the alleged criminal violations. Those witnesses included Mr. and Mrs. Clinton, Beverly Bassett-Schaffer and John Selig, of Little Rock's Mitchell Selig Tucker law firm, Stephen Smith, Larry Kuca, and others.

Again, these nine referrals, submitted to U.S. Attorney Paula Casey on October 8, 1993, were in her possession and available for her review when she rejected referral number C0004 on October 27, 1993.

The Kansas City RTC Criminal Investigation Unit had planned to submit the nine additional referrals on October 1, 1993. However, RTC Professional Liability Section Chief Julie Yanda obstructed that effort with her unprecedented demand that her staff first conduct a "legal review" of the referrals. Going back to July 1993, shortly after Ms. Yanda was briefed on the criminal referrals, the Criminal Investigation Unit observed the beginning of a concerted effort by the Professional Liability Section (PLS) to monitor the Madison investigation and exert control over certain aspects of it.

Mr. Iorio advised me that he was receiving complaints from the PLS about the level of communication by the Criminal Investigation Unit with the FBI and the U.S. Attorney's Office in Little Rock, as if to discourage and hamper communication among these offices. The PLS was even critical of my providing verbal assistance to an Assistant U.S. Attorney on a Madison-related matter, even though this was a standard procedure. The particular matter in question focused on the tracking of funds from the $300,000 Master Marketing loan deposited to the McDougals' personal checking account on April 8, 1986. PLS Criminal Coordinator Karen Carmichael termed this effort a "fishing expedition" by the U.S. Attorney's Office and accused criminal investigators of appearing to aid in the fishing expedition.

As I will discuss later in my testimony, the Independent Counsel's August 17, 1995 indictment against both James B. and Susan H. McDougal included six counts specifically focusing on the Master Marketing transaction and the disposition of the funds.

On September 30, 1993, the day before the planned submission of the additional referrals, Ms. Yanda imposed her demand for an unprecedented legal review. Four days earlier she had received copies of the referrals, as did a limited number of senior management staff in Washington and Kansas City. Also on September 30, 1993, Ms. Yanda assured Acting RTC General Counsel Glion Curtis that the "proposed referrals" would not be submitted to the U.S. Attorney's Office and the FBI until her staff in the PLS reviewed them.

At the time, Mr. Curtis had an open line of communication to former Treasury Department General Counsel Jean Hanson, who in turn reported to Deputy Treasury Secretary Roger Altman. We now know that Ms. Hanson provided the White House with a heads-up on the RTC's criminal referrals the day before, on September 29, 1993. We also now know that this heads-up—which Ms. Hanson has testified she delivered to the White House at Mr. Altman's direction, an assertion that Mr. Altman denies—resulted in a flurry of activity and communications between the White House and Treasury Department. The request for a legal review of the criminal referrals manipulated standard procedures and provided the Treasury Department the opportunity to review and selectively disseminate sensitive criminal referral information. Such sensitive information was, in fact, disclosed by Ms. Hanson in her September 29, 1993 visit to the White House.

On October 4, 1993, at my initiation, I met with RTC Regional Inspector General Dan Sherry. I informed Mr. Sherry about my concerns of PLS actions during the final phase of the Madison investigation.

On October 8, 1993, the completed legal review appeared by means of the RTC E-mail. The E-mail recipient list is noteworthy as it included additional people to whom the Kansas City RTC Criminal Investigation Unit had not provided copies of the criminal referrals. Among the new recipients were Acting RTC General Counsel Glion Curtis, Washington Assistant General Counsel Thomas Hindes, and Kansas City RTC Senior Counsel David Swiss and Russell Kaufman. The inclusion of these senior Washington and Kansas City managers raises the question: Why, and precisely at what point, did the legal review of the Madison criminal referrals become an issue of such far-reaching concern in the RTC Legal Division? Subsequent testimony revealed the legal review reached as far as the office of Treasury General Counsel Hanson.

The Madison investigation team immediately examined the legal review and found that it consistently focused on civil issues rather than the criminal allegations raised in the referrals. Even the criminal issues raised by the PLS were precisely the kind of issues that the U.S. Attorney's Office and the FBI have subpoena power to investigate, and should investigate, in pursuing a criminal referral.

Finally, this legal review suggested that a political fundraiser could explain the allegation that $6,000 of a $50,000 loan made to Charles Peacock, III on April 5, 1985 had been diverted to the Bill Clinton Political Committee Fund as part of a $12,000 campaign contribution engineered by Jim McDougal. But it was not until 3 weeks after the referrals were submitted that the press reported on an April 5, 1985 fundraiser for Mr. Clinton hosted at Madison by

Jim McDougal. This Committee may want to consider investigating whether this suggestion by the PLS was simply coincidental or if the legal review was assisted by other sources with specific knowledge of both the referral allegations and the April 1985 fundraiser.

The following week, the week of October 11, 1993, the PLS further interposed itself into the criminal investigation process by assuming control of all Madison subpoena compliance matters which, until that time, was the primary responsibility of the Kansas City RTC Criminal Investigation Unit. This was done without any prior notice. One roadblock created by the PLS was the implementation of a so-called "rolling production format." This meant that rather than submitting records to the FBI in Little Rock in compliance with Grand Jury subpoenas, the records were only available in Kansas City. This made access to these documents more difficult and, in the words of the PLS criminal coordinator, "this way, we will have a record of the documents they are reviewing."

On November 9, 1993, I was removed from the Madison investigation without warning or explanation at the direction of PLS Chief Julie Yanda. Ironically, 2 weeks later I received a special achievement award for my role in the Madison investigation.

Despite my removal from the Madison investigation, my assistance on this case was frequently solicited by the investigator who replaced me. He provided me with copies of documents and requests from Special Prosecutor Donald Mackay, and later Special Prosecutor Robert Fiske. Mr. Ausen and Mr. Iorio, my supervisors, were aware of and encouraged my assistance.

In early 1994, RTC management hired the law firm of Pillsbury, Madison & Sutro to conduct a civil review of Madison. My supervisors, the RTC civil review coordinator, and Pillsbury attorneys asked for my assistance in their review. I provided substantial support, advice and information throughout the civil review process.

In August 1994, Senior RTC PLS Civil Attorney April Breslaw testified before the House Banking Committee and intentionally mischaracterized and understated my role in the Madison civil review process. She testified it was "important to note Jean Lewis' distance from the civil review," that Jean Lewis' involvement in the civil review was limited to "gathering records as others requested them," and that Jean Lewis had "no prospects of being part of the investigative team reviewing Madison." Downplaying my involvement in the Madison civil review fits nicely into Ms. Breslaw's distortion of a conversation we had regarding the thrift and Whitewater. In fact, I earned a second special achievement award for my extensive contribution to the Madison civil review, as did a number of my colleagues.

On February 2, 1994, Washington investigative staff assigned to the Madison civil review, including Ms. Breslaw, came to the Kansas City RTC office to begin a preliminary on-site review of Madison records. Ms. Breslaw wanted to meet with me to discuss Whitewater, and later that day she did just that. Despite Ms. Breslaw's testimony before the House Banking Committee last year, and her effort to misstate and trivialize the significance of the meeting by calling it a casual "chitty-chat" that she said occurred on a nonexistent sofa, it is clear that Ms. Breslaw was there to deliver a

message that "the people at the top would like to be able to say Whitewater did not cause a loss to Madison."

Of course, Whitewater did cause a financial loss to Madison, and Madison's failure cost the American people millions of dollars. I was not about to turn my back to the abuses and crimes that my colleagues and I uncovered and reported to the U.S. Attorney and the FBI. It was and is our responsibility to help protect the depositors and taxpayers of this country, and ensure that our laws are enforced.

My conversation with Ms. Breslaw was recorded and I encourage Members of the Committee to listen to the tape and draw their own conclusions about her purpose in meeting with me.

The CHAIRMAN. We will do that.

Ms. LEWIS. Thank you. Mr. Chairman, Members of the Committee, I was raised in a military environment that encouraged tenacity, courage, honesty and love of country. I was taught respect for our institutions and the rule of law. I learned that under our Constitution, no one is above the law, no matter how powerful, but my recent experience at the RTC has shown me that despite the best efforts and intentions of our Founding Fathers, there are individuals, including public officials, who are capable and willing to skirt the law to unjustly enrich themselves at the expense of the rest of us.

Based on my belief that there was an effort underway to control, manipulate and even obstruct the Madison investigation, I contacted Chairman James Leach in mid-January 1994. I decided to bring these matters directly to the House Banking Committee as it has oversight of the RTC. I should mention that shortly thereafter Attorney General Janet Reno appointed Robert Fiske Special Prosecutor to investigate Madison and Whitewater.

On February 18, 1994, I met with Chairman Leach for approximately 4 hours. I believe it is important that I provide some additional detail explaining the reasons I sought the meeting with Chairman Leach.

Between October 1993 and January 1994, I was concerned about the Department of Justice's apparent loss of referral number C0004, the first criminal referral, only 4 months after Mr. Hubbell's arrival there, as well as Mr. Hubbell's initial reluctance to recuse himself from Madison and Whitewater matters. I also was concerned by the circumstances surrounding U.S. Attorney Paula Casey's rejection of the first criminal referral, as summarized in my testimony earlier, and wondered whether the nine new referrals would receive a serious review.

In addition, I was informed of a meeting in November 1993 between Special Prosecutor Donald Mackay, PLS senior management and Investigations senior management, at which Mr. Mackay said his copy of criminal referral number C0004 had arrived with an unsigned Post-it note on it stating, "We wouldn't be unhappy if this went away."

That's not all. New directives had been issued by PLS Washington requiring their approval of all outgoing Madison-related correspondence from the Kansas City RTC Criminal Investigation Unit. This removed that unit from its longstanding role in supporting Grand Jury subpoena compliance and created an unprece-

dented legal review role for the PLS before criminal referrals could be provided to the Justice Department.

In October 1993, I was removed without explanation from the Madison communication loop by the PLS criminal coordinator and instructed to stop communicating directly with the U.S. Attorney's Office. Then, on November 9, 1993, the same day U.S. Attorney Paula Casey recused herself, I was removed from the Madison investigation, again without explanation.

Of course, on February 2, 1994, there was Ms. Breslaw's meeting with me and her effort, on behalf of "the people at the top," to place undue pressure on my conclusion that Whitewater had caused a loss to Madison.

So as you can see, I was extremely troubled by these and other events and decided to contact Chairman Leach. I met with Chairman Leach on February 18, 1994.

On March 2, 1994, I received a message from an Associate Counsel in Independent Counsel Robert Fiske's office, requesting a return call to discuss the criminal referrals. I was advised by Mr. Iorio that James Dudine, RTC Investigations Director in Washington, had instructed I was not to return the call. In a later E-mail, RTC Assistant General Counsel Thomas Hindes stated that all contact with the Special Prosecutor would be handled by Washington PLS, and he wanted to be notified of additional "random contacts" at the field level.

On March 9, 1994, Senior Washington PLS Attorney Mark Gabrellian told me that any meetings I had with Mr. Fiske's staff had to be arranged and attended by PLS staff. I objected to this new arrangement. Mr. Gabrellian said he would be forced to report my objection to senior Washington management. Specifically, he stated that he would advise RTC Head Jack Ryan, RTC General Counsel Ellen Kulka, and RTC Assistant General Counsel Hindes.

In the spring of 1994, a variety of troubling events began; for example, there were three unauthorized entries and searches of my office. In addition, the Washington PLS senior staff were displeased that Mr. Iorio had renewed my employment contract.

The culmination of these events occurred on August 15, 1994 when Mr. Iorio, Mr. Ausen and I were placed on 2 weeks' administrative leave following the House Banking Committee hearings in the summer of 1994. On August 15, 1994, Mr. Ausen and Mr. Iorio were summoned to an office, told they were placed on leave, escorted back to their offices, and then out of the building and told to stay off RTC property. Their offices were locked and sealed, and the main locks to the Investigations Department were changed.

At that time, I was in the hospital——

The CHAIRMAN. Mr. Iorio, is that a fact?

Mr. IORIO. That's true.

The CHAIRMAN. Please continue.

Ms. LEWIS. Thank you. Late that morning a co-worker called informing me that Mr. Iorio and Mr. Ausen had been placed on administrative leave. He said "the purge has begun." He called again later to say that I was also included in the leave. That night the administrative leave was reported on the evening news, although I had not received official notice from the RTC. On August 19, 1994, I was given a memorandum from Assistant General Counsel

Hindes in Washington placing me on administrative leave. I, like Mr. Iorio and Mr. Ausen, was banned from RTC property.

According to news accounts, we learned the RTC was conducting "an informal factfinding investigation" into allegations of mismanagement, misuse of travel vouchers and timesheets, and misuse of Government equipment. Remarkably, none of us were contacted for interviews or information.

Through a letter from our attorneys, Mr. Iorio, Mr. Ausen and I initiated a request that the RTC's Office of Inspector General, the OIG, be asked to conduct a fair and independent investigation into our administrative leave. Following our written request and without any further explanation, Mr. Iorio, Mr. Ausen and I were instructed to return to work on August 29, 1994. After we returned to work, the OIG responded to our request and contacted us on a preliminary basis about their pending investigation into the administrative leave. However, that investigation was postponed at the request of Independent Counsel Kenneth Starr's office and his staff continues to review the matter. However, as I sit here today, I have never been told why I was placed on 2 weeks' administrative leave.

Prior to the House Banking Committee hearings on August 8, 1995, the Independent Counsel obtained guilty pleas from Stephen Smith, Chris Wade and Larry Kuca, as well as the initial indictment against Arkansas Governor Jim Guy Tucker, all of whom were clearly identified within the RTC referrals.

Since my last public testimony on this matter, the Independent Counsel announced on August 17, 1995, an additional 21-count indictment against Governor Jim Guy Tucker and James B. and Susan H. McDougal, bringing the number of pleas and indictments against individuals identified in the RTC criminal referrals to six.

Several of the criminal referrals submitted by the RTC Investigation Unit to the Justice Department contributed significantly to the August 17th indictment. The following information will clearly illustrate this point and demonstrate the professionalism and thoroughness with which this investigation was undertaken by the RTC Criminal Investigation Unit.

RTC criminal referral number 190 provided a substantial basis for several of the counts included in the August 17th indictment. The referral identified James B. McDougal and Jim Guy Tucker as suspects, and alleged aiding and abetting, misapplication of funds, conspiracy, and false statement. In making these allegations, the referral specifically cited the misapplication of $131,641.50 from an October 1985 Madison Guaranty loan, number 3004, for $260,000 made to Jim Guy Tucker purportedly for the purchase of property in South Little Rock, Arkansas. The referral further cited that Mr. Tucker utilized these funds from the loan proceeds to pay off an unrelated debt he had guaranteed at Savers Savings in Little Rock, which had nothing to do with the property purchase in South Little Rock.

Count 1 of the August 17th indictment charged Jim Guy Tucker and James B. McDougal with misapplication of funds, false entry, and conspiracy, specifically citing an October 1985 loan to Jim Guy Tucker for $260,000 to purchase property in South Little Rock. Count 20 of the indictment further charges both Mr. Tucker and Mr. McDougal with aiding and abetting and misapplication of

funds, specifically for utilizing $131,641.50 of the $260,000 loan proceeds to pay off a loan at Savers Savings.

The charges against Mr. Tucker and Mr. McDougal contained in the August 17th indictment confirmed allegations outlined in RTC criminal referral number 190.

RTC criminal referral number 198 also provided a substantial basis for several counts outlined in the August 17th indictment. Identifying James B. McDougal and Jim Guy Tucker, among others, as suspects, the referral specifically alleged misapplication of funds, conspiracy, and false statement regarding a land flip of property located at 1308 Main Street, Little Rock, Arkansas. The referral further cited the use of a $125,000 mortgage loan made by Madison to a nominee borrower in October 1985, approximately 7 months after the property had allegedly been conveyed. The referral further identified a second mortgage on the property for the amount of $190,000 made to a second nominee borrower in January 1986, indicating an increase in the property value of 422 percent in less than 2 years.

The August 17th indictment charges James B. McDougal and Jim Guy Tucker with misapplication of funds, false entry, conspiracy, and aiding and abetting. Specifically, count 1 of the indictment charges that the defendants "would and did engage in land flip and other fraudulent transactions," and that "the defendants would and did undertake and cause a series of fraudulent financial transactions, including a series of transactions from in or about March 1985 through in or about January 1986 in which the property at 1308 Main Street, Little Rock, Arkansas was transferred from one nominee to another for the purpose of generating false profits." The indictment further charged that Jim Guy Tucker "signed a deed conveying the property at 1308 Main Street to another nominee selected by James B. McDougal." Counts 17, 18 and 19 all clearly identify further charges relating specifically to nominee borrowers and the land flip of property at 1308 Main Street.

In summary, the charges against Mr. Tucker and Mr. McDougal contained in the August 17th indictment confirmed allegations outlined in RTC criminal referral number 198.

RTC criminal referral number 199 also provided a significant basis for several of the counts contained in the August 17th indictment. Specifically, the referral identified James B. McDougal as a suspect, along with several of his business associates, in the development of resort property on Campobello Island off the coast of New Brunswick, Canada and alleged conspiracy, aiding and abetting, misapplication of funds, and false statement. The referral further outlined the involvement and participation of McDougal business associate and Madison insider Larry Kuca.

The August 17, 1995 indictment specifically charges James B. McDougal with mail fraud, false entry, and false statement to a financial institution. In addition, the indictment outlines the involvement of Campobello participant Mr. Kuca who, as previously mentioned, was also identified in RTC criminal referral number 199. Mr. Kuca has already pled guilty.

Finally, the RTC's Kansas City Criminal Investigation Unit identified, and included in the database submitted as an exhibit to referral C0004, $300,000 deposited into the McDougals' personal

checking account on April 8, 1986, which was subsequently determined by Assistant U.S. Attorney Fletcher Jackson to be the CMS loan to Susan H. McDougal doing business as Master Marketing. In addition, the Kansas City RTC Criminal Investigation Unit tracked the flow of funds from the loan proceeds through the McDougals' account and provided the information to the U.S. Attorney's Office in Little Rock. The RTC Criminal Investigation Unit substantiated that the loan proceeds were not used for previously stated purposes.

Clearly, the unit's work also contributed significantly to the August 17th indictment as it relates to the Master Marketing transaction. For example, counts 1 and 2 charge both James B. and Susan H. McDougal with conspiracy and mail fraud. Counts 13, 14, 15 and 16, consecutively, charge both McDougals with wire fraud, mail fraud, aiding and abetting, false entry, and false statement to a financial institution. Each of these four consecutive counts also clearly outline that the McDougals did not intend to utilize the funds for their stated purpose, but did, in fact, spend "the proceeds of the $300,000 Master Marketing loan on items wholly unconnected to any business called Master Marketing."

In summary, the RTC Criminal Investigation Unit's work relating to the Master Marketing transaction provided a substantial foundation for numerous charges brought against James B. and Susan H. McDougal by the Independent Counsel's Office as set forth in the August 17, 1995 indictment.

Before I conclude, I'd like to take this opportunity to address certain issues raised on national television and during my deposition which clearly are intended, among other things, to try to discredit and embarrass me and direct the focus of these hearings from the facts uncovered during the investigation of Madison.

On October 25, 1995, on national television, Minority Counsel, Mr. Richard Ben-Veniste, stated in part the following regarding my production of documents to this Committee: "The record will show that we've received communications from counsel for Ms. Lewis, who has indicated an unwillingness to provide materials to us that we have asked for repeatedly."

This was and is untrue. In fact, the deadline set by this Committee for responding to its document request had not even passed when Minority Counsel made this charge. If he actually believed my counsel and I were refusing to produce documents, he could have raised this concern directly with my counsel before making this assertion to the television cameras. He didn't. Instead, he created a false impression that I was refusing to cooperate with this Committee.

My counsel in Dallas first received a document request from this Committee by facsimile on the evening of October 17, 1995. The very next day, October 18, I asked the telephone company to provide me with the requested telephone records. My counsel and I have responded diligently to the multiple document requests and subpoenas received from this Committee.

During my 2-day deposition, it soon became clear that Mr. Ben-Veniste was intent on delving into a wide range of personal issues and matters having nothing to do with Madison and Whitewater. For instance, he inquired about my engagement letter with my

counsel, which was sent to me at the RTC by facsimile, intercepted by a co-worker, provided to one of my supervisors, and sent on to a Member of Congress. He asked whether I was writing a book about these events, which I am not. He questioned me about 703 area code telephone calls listed on my home telephone records, which were not even requested by this Committee. He also questioned the nature of legal proceedings between my former husband and the NAST, in which I had no involvement, and even went so far as to question my current spouse's employment.

Mr. Ben-Veniste also suggested the timing of the first criminal referral may have been politically motivated because the Clintons are named as possible witnesses and beneficiaries of criminal conduct and the referral was sent to the Justice Department during the Presidential campaign.

This is a curious point. Is a criminal investigator supposed to withhold evidence of bank fraud, check kiting, misappropriation of funds and related offenses from the Justice Department until after an election because a candidate's name is mentioned? Now, that, it seems to me, would be political. Furthermore, the existence of the criminal referral and the information it contained had no effect on the election because it was not revealed.

Finally, I have been asked during my deposition and past testimony whether I know, in fact, if the Clintons actually had knowledge of the corruption at Madison. What I do know is there is no doubt the Clintons benefited from the McDougals' activities. For instance, Whitewater, a company in which the Clintons were principals, used kited funds to pay its mortgages, accounting fees, and make unauthorized loans to itself. If the Committee wants to know what the Clintons knew about the corrupt activities resulting in losses to Madison, why not invite the Clintons to testify as I am today and have in the past? Why not ask them directly?

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Ms. Lewis.

Mr. Iorio.

SWORN TESTIMONY OF L. RICHARD IORIO
DIRECTOR OF FIELD INVESTIGATIONS
KANSAS CITY, MISSOURI OFFICE, RTC

Mr. IORIO. Mr. Chairman, I would like to thank the Special Committee to Investigate Whitewater Development Corporation and Related Matters for the opportunity to appear today and to present the following opening statement.

For the past 3½ years I have been the Director of Investigations for the Resolution Trust Corporation, Kansas City, Missouri office. This office has the responsibility for 189 failed savings and loan institutions, encompassing a geographical area composed of 21 States. During this timespan, approximately 1,500 claims involving failed institutions have been investigated by this office. As of this date, this office has recovered approximately $227 million. Of this amount, over $10 million in recoveries is attributed to the work of the Criminal Investigations Department——

The CHAIRMAN. Mr. Iorio, might I interrupt you just to ask, before you took this position 3½ years ago, would you give us your background? Are you an attorney?

Mr. IORIO. I am an attorney, a former bank president, and a former FBI agent.

The CHAIRMAN. How long were you with the FBI?

Mr. IORIO. Approximately 3½ years.

The CHAIRMAN. OK. Would you then proceed. I just wanted to get a background. I thought that was important.

Mr. IORIO. Certainly.

Of this amount, over $10 million in recoveries is attributed to the work of the Criminal Investigations Department of the Kansas City office through its Criminal Restitution Order program. The Kansas City Office of Investigations is a complex and sophisticated compilation of individual skills. The cost of operations, which can be verified by documentation, is only a small part of the amount recovered as a result of the investigations conducted.

I provide this information because of the many questions raised about the ability, quality of work and quantity of work handled by this office. As you are aware, the Resolution Trust Corporation ends its existence on December 31, 1995. As of that date, the Kansas City Office of Investigations also ceases to exist. At that time the remaining work will be transferred to the FDIC investigative office in Chicago, Illinois. Both offices have been working together closely to ensure that there is no lapse in the work cycle.

The Investigations Office in Kansas City has continued to be productive and will, at year end, turn over to the Chicago office approximately 40 claims. All of these claims are professional liability claims except for a few borrower civil fraud claims. The total amount of potential recoveries represented by these claims is in the $25 to $30 million range. The number of claims is mentioned now to verify the volume of work handled and recoveries obtained by the Kansas City office.

It is also important to note that none of the remaining claims are for criminal investigations. All criminal investigations in the Kansas City office have been completed. The Criminal Investigations Department continues to provide support to various U.S. Attorneys' Offices on criminal referrals that were submitted previously. This Department, when asked, continues to support the Office of Independent Counsel and the Federal Bureau of Investigation as they conclude their investigations of Madison Guaranty Savings & Loan Association.

Part of this ongoing investigation concerns itself with the issues raised by the 10 criminal referrals submitted by the Kansas City Office of Investigations.

In prior interviews, depositions, and House Banking Committee hearings held in August of this year, information was given concerning the unprecedented scrutiny that had been focused on the efforts of preparing the referrals and the subsequent review of referrals. Through this arduous process, the Kansas City Office of Investigations has been subjected to an alteration of the work environment that included instigation of special procedures, a new review critique mechanism, a slowdown of information flow, information leaks, and for us, Jean Lewis, Lee Ausen and myself, the uncertainty of being placed on administrative leave without prior notification to RTC Investigations management in Washington, DC.

At that point, the review of our work appeared to be more than an effort to confirm or deny our findings. Instead, it appeared that three of us had become the messengers of unwanted news and, if history serves as a guide, were often the targets of attacks meant to deflect attention from the information the messengers bring.

Since that time, both Jean Lewis and Lee Ausen have resigned their positions with the RTC. However, the question of why the three of us were placed on administrative leave has not been answered. When RTC PLS management is approached with this question, there are innuendoes and allegations but no factual information has been presented either verbally or in documentation form. If documentation exists, why has it not been released? Requests by Washington, DC Investigations management have been met with the response that a document of this type does not exist. This raises the issue that guarantees contained in the Fifth Amendment of the Constitution were violated and continue to be violated to this very date.

In relation to the question concerning placing the three of us on administrative leave, there are a number of other questions concerning the motivation that should be answered before the RTC is dissolved and no one is present who can provide an answer.

The first concern relates to the report of the Inspector General of the RTC on the Rose Law Firm. This report was given to the General Counsel of the RTC for review and appropriate action. Nevertheless, some 4 months later, there has been no decision forthcoming with regard to either policy or employee problems concerning the subject matter. The majority of the Rose overbillings presented to the RTC were processed by the Kansas City Professional Liability Section. In addition, this PLS office knew of ongoing conflicts and failed to either notify the Rose Law Firm and/or seek corrective action.

The second issue involves the Pillsbury, Madison & Sutro law firm which was reportedly hired to conduct a civil review of the claim potential in the failed Madison Guaranty Savings & Loan Association. This review lasted approximately 18 months and estimated costs are approximately $3½ to $4 million. One small report has been made public by the RTC Legal Division. However, the available information from this report does not deal with the civil claim, but rather covers information that was contained in one of the 10 criminal referrals.

In addition, interview lists contained in the report indicate that other interviews were conducted which pertained to information contained in some of the remaining criminal referrals.

Is it possible that Pillsbury, Madison & Sutro were hired at taxpayer expense to review the criminal referrals and evaluate their credibility? If so, why, and to whom has this report been made available? The stated reason was to conduct a civil review.

Further, it appears that Pillsbury, Madison & Sutro interviewed individuals that were of interest to the Office of Independent Counsel. Some of these interviews were conducted prior to the Office of Independent Counsel conducting their own interviews.

Why have not all reports prepared by Pillsbury, Madison & Sutro for the RTC Legal Division been made available to the Congress of the United States and to the Office of Independent Counsel?

The third concern occurred during 1994 and 1995 when documents were provided by the Kansas City Office of Investigations to the RTC Legal Division in Washington, DC in compliance of subpoenas or other legitimate requests by either the Office of Independent Counsel or the House Banking Committee. On more than one occasion, documents submitted did not arrive at their final destination of either the Office of Independent Counsel or the House Banking Committee. In all of these situations, the documents were resubmitted directly by the Kansas City Office of Investigations. Why did the RTC Legal Division withhold documents?

In addition, some of the documents cleared by the RTC Legal Division were so heavily redacted that they could not be understood. Why was this done?

The American public deserves answers to these questions. In its oversight capacity, the Congress of the United States, and specifically the Senate Banking Committee, can ensure that this information is forthcoming.

The function of the RTC Kansas City Office of Investigations will end on December 31, 1995. As I reflect on my nearly 4 years' involvement with the Madison investigation, there's one overriding concern that comes to mind. Will career Government employees be allowed to do their job in a fair and impartial manner without fear and intimidation? If nothing else comes out of the hearings, the Committee should guarantee that this standard is met.

Thank you.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, could I speak for a moment on a point of personal privilege?

The CHAIRMAN. Go ahead.

Senator SHELBY. I'll try to be brief.

The CHAIRMAN. Certainly.

Senator SHELBY. Mr. Chairman, I think, just listening to Ms. Lewis and the many important things that she said in her opening statement, there's one thing that bears special emphasis as we go through the day here. That is that 12, 12 of the 21 counts of the indictment that the Independent Counsel, Kenneth Starr, is dealing with, has filed, are related to the referrals that Ms. Lewis prepared on Madison. I believe that says a lot.

That's powerful evidence of the quality of your work and the importance of the investigation, Ms. Lewis, and I wanted to note that early.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Ms. LEWIS. Mr. Chairman——

The CHAIRMAN. At this point—pardon me?

Ms. LEWIS. Mr. Chairman, I just wanted to make a short comment to Senator Shelby, if I might. I appreciate you attributing all of that work to me, Senator.

Senator SHELBY. Or to the office.

Ms. LEWIS. It is the entire office that did it, but thank you very much.

Senator SHELBY. Sure.

The CHAIRMAN. At this point, I'm going to ask that the tape which Ms. Lewis referred to in her opening statement, which is a tape-recording made of a conversation that she had with April Breslaw, be played, the entire conversation between the two of them. The Committee shall play, in its entirety, side B of the tape which contains the conversation between Ms. Lewis and Ms. Breslaw. It's my understanding that this tape is an exact copy of the original tape supplied to Special Counsel Fiske by Ms. Lewis in 1994.

Now, the Committee has arranged for Ace-Federal Reporters, Inc., to transcribe the tape and transcripts of the tape have been made available today. The conversation we will listen to begins at page 52 of the transcript. So for those who want to be able to follow this, again, at page 52. I will ask Ms. Lewis to confirm, after we play this, whether or not this is the entire conversation that was taped between her and Ms. Breslaw when she came to see her, and Ms. Lewis made reference to some of the things she indicated. This way, we'll get the entire conversation, and we can follow it with the transcript as well.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, is this the original tape?

The CHAIRMAN. This is a copy from the original, that's correct. The original tape, the Special Counsel has that. This is an exact copy of the original tape supplied to the Special Counsel by Ms. Lewis in 1994.

Senator SARBANES. Was this copy made by the Special Counsel from the original and furnished to the Committee?

Mr. CHERTOFF. Yes. Judge Starr furnished the Committee with an exact copy made directly from the original tape.

Mr. BEN-VENISTE. Indeed, Mr. Chairman——

The CHAIRMAN. I know he has a right to yield to you, but I don't think you want to interrupt Senator Sarbanes.

Go ahead, Senator.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. With respect to the request for the original, the original was requested by the Minority staff to be copied in its exact form because the copy which was provided by Ms. Lewis to this Committee was not an exact copy. Indeed, it was an altered copy.

I would ask the Chairman, most respectfully, whether he intends to play the tape from the beginning or only the portion relating to the Breslaw conversation?

The CHAIRMAN. We're going to play this starting at page 52, which is the Breslaw conversation with Ms. Lewis.

Mr. CHERTOFF. Mr. Chairman, if I can amplify, first of all, I think it is frankly not accurate to suggest—and I assume it was an inadvertent suggestion—that there was an alteration in the conversation between Ms. Lewis and Ms. Breslaw in the copy that has been furnished by Ms. Lewis. I think what Mr. Ben-Veniste was alluding to was there was an introduction taped onto the copy that Ms. Lewis made, which is something she did when she made the copy.

The CHAIRMAN. For purposes of identifying the tape, she apparently says this was made. This is the conversation of such-and-such a time between me and so-and-so.

Mr. BEN-VENISTE. That is not correct.

Mr. CHERTOFF. Second, if I can finish, Mr. Ben-Veniste—and, frankly, the copies of the tape are free for anyone to compare them—regarding the entirety of the conversation, just to be completely clear, this is a tape from what was a little dictating tape recorder. It contains a lot of material that was recorded extraneous to the conversation.

We had the entirety of that tape transcribed by the court reporting service. Rather than spend an hour on dictation or other immaterial matters, we have begun with side 2 of the tape which I think commences——

The CHAIRMAN. Side B.

Mr. CHERTOFF. —side B which commences with some dictation that Ms. Lewis was doing for herself and then leads into the conversation that was recorded with Ms. Breslaw, and it's that side we'll play in its entirety.

Senator SARBANES. Mr. Chairman, I want to be very clear here what it is we're going to be listening to. As I understand it, an original tape was furnished to the Independent Counsel.

Mr. CHERTOFF. Correct.

Senator SARBANES. In addition, Ms. Lewis furnished copies—allegedly copies of the original tape.

Mr. CHERTOFF. She furnished a copy that she had made of the original tape, that is correct.

Senator SARBANES. That copy differed from the original tape.

Mr. CHERTOFF. My understanding is that the difference relates to the prologue—the identifying information which she taped onto the copy cassette before she then duplicated the original tape into that copy.

Senator SARBANES. Is that the only difference?

Mr. CHERTOFF. That's my understanding.

Mr. BEN-VENISTE. That's not correct exactly, Mr. Chertoff.

The CHAIRMAN. What is correct exactly, Mr. Ben-Veniste?

Mr. BEN-VENISTE. What is correct exactly, Mr. Chairman, is that the copy provided to the Committee and the transcript accompanying that copy were incorrect in two respects.

First of all, Ms. Lewis swore in her deposition that she had made an exact copy of the tape and furnished it to us. That is not true because the original tape-recording, as you can see by looking at the last page, has some comments by Ms. Lewis dictated onto it. Ms. Lewis testified that she had dictated a prologue onto the original tape before the Lewis/Breslaw conversation started. That is incorrect.

The second thing——

The CHAIRMAN. Mr. Ben-Veniste, at this point in time, let me suggest to you that the conversation that was recorded is accurate. If we're going to get into whether or not she put the prologue at the beginning of one tape and at the end of the other, that is the kind of nitpicking that I'm not going to permit. I'm not going to permit it from either side.

If you are suggesting that the conversation that we are about to hear in any way has been altered, that goes to the essence, and that's important. But to suggest that because someone has an introduction at the beginning of one and at the end of the other that this is not the same tape, I think that we're really pushing it to the limits.

Mr. BEN-VENISTE. Mr. Chairman——

The CHAIRMAN. Go ahead. Make your second point, but we're going to hear the tape.

Senator BOXER. Yes, we want to hear the tape.

Mr. BEN-VENISTE. We have no problem with that, Mr. Chairman.

The CHAIRMAN. The authenticity of the tape is that it was provided to this Committee by the Special Counsel and that we have gone to the trouble of also having had it transcribed for the Members of the Committee.

Senator SARBANES. That's what we're trying to ascertain, Mr. Chairman. I want to hear the tape, but I want to be very clear on what tape it is I'm hearing.

Mr. BEN-VENISTE. The tape actually begins, Mr. Chairman, with two dictations by Ms. Lewis. Those dictations, according to her sworn testimony before this Committee, were not made by her on the original tape. She said she didn't make a dictation. That portion of the tape which she did not duplicate for this Committee bears upon the circumstances under which this tape was made which we do, in fact, question, Mr. Chairman.

The CHAIRMAN. You'll have an opportunity to question her.

Mr. BEN-VENISTE. That's why we ask that the entire tape be played, that it should start at the beginning, Mr. Chairman.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Mr. Chairman, rather than arguing about how many angels dance on the head of a pin, perhaps we could hear the tape and then question Ms. Lewis directly as to whether that is, in fact, the conversation that she had. I mean, all the rest of this chaff will fall by the wayside if we play the tape, and it is her testimony that that is an accurate recording of the conversation discussed. Why don't we go ahead and hear the tape and then——

The CHAIRMAN. I intend to do that, but I want to recognize——

Senator SARBANES. Let's get an answer to this question: Is the tape we're about to hear a tape made by the Independent Counsel from the original given to him by Ms. Lewis?

Mr. CHERTOFF. Yes.

Senator SARBANES. So it's from the original.

Mr. CHERTOFF. Yes.

Senator SARBANES. Not from the copy.

Mr. CHERTOFF. Correct.

The CHAIRMAN. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I don't want to talk about how many angels, but I have a basic question here. I know the law changes jurisdiction by jurisdiction, but am I to understand that this was a tape Ms. Lewis made of a conversation with Ms. Breslaw that was a secret recording? Ms.

Breslaw didn't know that her conversation was being tape-recorded at the time, and if that's the case—that is the case; is that right, Mr. Chairman?

The CHAIRMAN. I believe that's the case, yes.

Senator MOSELEY-BRAUN. My question, then, is if somebody records a conversation—you and I are having a conversation—assuming we weren't elected officials because I guess we're in a different situation—but if we were having a conversation and I recorded what you said to me and you didn't know I was recording what was being said to me, could that then be used in a Senate hearing?

The CHAIRMAN. Under Federal law, there's no prohibition with respect to that, and this is not a court of law so we do have——

Senator MOSELEY-BRAUN. I understand, but the question I want to ask is not just that. Did Ms. Breslaw say that it was OK that her conversation be used in this way?

The CHAIRMAN. I don't believe so. We're going to have Ms. Breslaw in here this afternoon so she can have an opportunity, in fairness to her, to respond and so that the Committee can ascertain all the facts.

Senator MOSELEY-BRAUN. I just wanted to know, in terms of being fair, what we're using here is a tape of a conversation that the other person in that conversation didn't know was being made when it was being made?

The CHAIRMAN. Correct.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. I have a very brief question. Is this the tape that was produced as a result of the tape recorder turning itself on? On page 192 of the deposition, our witness said "yes, sir" to the question "this went on by itself; correct?" She said that was correct. So this was a tape from a tape recorder that went on by itself and the individual we're going to listen to didn't know she was being recorded. I think that's important for the public to understand.

The CHAIRMAN. Fine. Would you play the tape, please.

Mr. BEN-VENISTE. Mr. Chairman——

The CHAIRMAN. We're going to begin on side B.

Senator SARBANES. Page 52.

[The audiotape was played.]

The CHAIRMAN. Ms. Lewis, you were dictating into the portion of the tape that we just heard?

Ms. LEWIS. Yes.

The CHAIRMAN. This is not part of the conversation. This is dictation that you have made on the tape prior to the taping of the conversation?

Ms. LEWIS. That's correct.

Senator BOXER. Which went on by itself.

Senator MOSELEY-BRAUN. Excuse me——

The CHAIRMAN. She's dictating it to herself.

Senator MOSELEY-BRAUN. She dictated this to herself?

The CHAIRMAN. This was dictation that she had included on the tape prior to the conversation that she had. Now, at this point, ap-

parently at line 19, where it pauses, you will hear two people begin to speak. This is on page 53, where it says "pause; Participant [female]." There's a long pause here.

Mr. CHERTOFF. Ms. Lewis, the machine is on here; correct?

Ms. LEWIS. Yes, sir, that's correct.

Senator BENNETT. Mr. Chairman, do we know who the participant female is?

The CHAIRMAN. Yes, the participants to the conversation are Ms. Lewis and April Breslaw; is that correct?

Ms. LEWIS. Yes. Senator D'Amato, I would point out that line 19 on page 53 is Ms. Breslaw's opening comment to me. This does overlook my first comment which was "come in, come in."

The CHAIRMAN. There's a comment where you say "come in, come in" and it was not picked up?

Ms. LEWIS. It should be there, sir.

Senator SARBANES. When you say it overlooks it, what do you mean by that?

The CHAIRMAN. She does not see it transcribed here is what she's saying. She's saying that in the tape she says "come in, come in" and apparently in the transcription that "come in, come in" was not picked up. Is that what you're saying?

Ms. LEWIS. Yes, sir, that's correct.

Senator MOSELEY-BRAUN. "Come in" to where, Mr. Chairman?

The CHAIRMAN. April Breslaw coming into her office; correct?

Ms. LEWIS. Yes.

The CHAIRMAN. April Breslaw came in to visit you. What day was this?

Ms. LEWIS. February 2, 1994.

The CHAIRMAN. So on February 2, 1994, this tape recorder is now, after you had given this dictation, is now still operating?

Senator SARBANES. And you're being recorded at the moment?

The CHAIRMAN. How long does this go on for? It's an awful long minute and a half.

Senator BENNETT. If it's 18½ minutes we're in real trouble.

Senator MOSELEY-BRAUN. Did Ms. Lewis tell Ms. Breslaw she was taping their conversation?

The CHAIRMAN. No, I do not believe she did. I believe she said she did not tell her that.

Here it is, "come in, come in."

[The audiotape was played. The transcript follows:]

PARTICIPANT: Are you going to deal with all of the scare tactics on the statute? Statutes. That are appearing in here.

PARTICIPANT (female): Uh, yes. Toward the end of the -- (Inaudible.) --

PARTICIPANT: Toward the end of the --

PARTICIPANT (female): Yes.

PARTICIPANT: All right.

PARTICIPANT (female): Not -- (Inaudible.) --

PARTICIPANT: Right. Got it.

(Pause.)

PARTICIPANT (female): Hello, Kenny. It's me. April stuck her head in a little while ago and she said that whatever questions she had on the civil side regarding Whitewater she'd evidently already had answered everything -- (Inaudible.) -- the board minutes. So I think you're off the hook. Rat. Just thought I'd let you know. I'm going to go get her now and tell her to come on back. You bet. Bye bye.

(Pause.)

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): I'm sorry. Richard brought in a copy of this -- (Inaudible.) -- Mike and I got caught up doing responses to -- (Inaudible.) -- questions.

PARTICIPANT: That's fine. If you hadn't seen it I was going to make sure you got a copy.

PARTICIPANT (female): I did and I find one phrase in here to be very interesting. "If such claims do exist the RTC will vigorously pursue all appropriate remedies using standard procedures in such cases...."

PARTICIPANT: Standard.

PARTICIPANT (female): Thank you. Standard being the key because what they are doing right now is anything but standard procedures. We've been jumping through hoops that don't even come close to standard procedures.

PARTICIPANT: I think the biggest problem they're having is the fact that Fisk isn't talking to anybody in Washington and it's pissing them off. (Laughter.)

PARTICIPANT (female): Well, why do you

suppose Fisk isn't talking to anybody? Because he isn't ready to set up shop yet?

PARTICIPANT: He figures if you don't talk you don't have any leaks. (Laughter.) So maybe he'll start selectively talking and then stop, then talk different periods and stop.

PARTICIPANT: So that guy's coming down to see you and Michael again, that same question.

PARTICIPANT (female): Scott Hamilton?

PARTICIPANT: Yes. Popped up again --

PARTICIPANT (female): -- (Inaudible.) -- interesting because -- Michael and I just made a real interesting connection on the Scott Hamilton and -- (Inaudible.) -- happenstance as we were digging through the property database.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): And I'm still waiting on April. I just went down and stuck my head in --

PARTICIPANT: We'll get to April when we're ready to see April.

PARTICIPANT (female): Well, I told her I

was available if she wanted to come talk to me.

PARTICIPANT. I want to get you and Ken in together.

PARTICIPANT (female): She said she didn't need to talk to Kenny.

PARTICIPANT: She does. She doesn't know it.

PARTICIPANT (female): Okay. Then I'll invite -- (Inaudible.) -- to come down here and sit and wait with me.

PARTICIPANT: They'll let you know when they're ready. Oh, excuse me. Garlic.

PARTICIPANT (female): Oh, and what did you have for lunch? Italian?

PARTICIPANT: We were down in Guido's country.

PARTICIPANT (female): Well, that's what April said. They were just -- how did she phrase it? Not tourists.

PARTICIPANT: We felt like tourists. Out of our element, that's for sure.

PARTICIPANT (female): Something like we

were just along for the ride down in Mafioso territory. That Italian sitting up there.

PARTICIPANT: Black Mercedes with blacked out windows.

(Laughter.)

PARTICIPANT (female): That's the only part of town where I don't tell my "Guido Get the Gun" story.

(Laughter.)

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Oh, dear.

PARTICIPANT: When we went through downtown and across a couple of bridges and then took a right --

PARTICIPANT: Being followed by J.J.

PARTICIPANT: Could be worse.

(Simultaneous discussion.)

PARTICIPANT (female): I'll stand, actually. I've been sitting long enough for today.

PARTICIPANT: Where's Michael Jean?

PARTICIPANT (female): I think Michael Jean is in his office -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT (female): He wasn't there when I just walked by.

PARTICIPANT (female): Scott Hamilton again?

PARTICIPANT (female): Yes. This Wall Street Journal reporter is -- (Inaudible.) -- I want him off my back.

PARTICIPANT (female): You know what? Interesting you would bring that up because Michael and I were just looking at something. -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT: Sit down J.J.

PARTICIPANT (female): I'm getting so elderly.

PARTICIPANT (female): Take a load off.

PARTICIPANT: Getting so elderly. -- (Inaudible.) --

PARTICIPANT: -- (Inaudible.) -- coming back.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Go away and leave us --

PARTICIPANT: LBJ.

PARTICIPANT (female): Go away.

PARTICIPANT: When you're done let me know, then we'll arrange the next meeting.

PARTICIPANT (female): Oh, thank you. I'm so glad I now have a social secretary.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Two of the girls from our department -- I don't know if you've ever seen the little newsletter that we do every couple of months, the employee newsletter?

PARTICIPANT (female): Uh huh.

PARTICIPANT (female.): But they went out to the -- (Inaudible.) -- and they sort of did this review, and one of them had never been there before -- (Inaudible.) --

PARTICIPANT (female): They went to the -- (Inaudible.) --

PARTICIPANT (female): Yes. -- (Inaudible.) -- cheap entertainment. And they went

on a Friday night when you can get in for 50 cents.

PARTICIPANT (female): Did they critique Randy in there?

PARTICIPANT (female): Uh, no. They did critique Woody. They weren't too impressed by Woody, Woody itself.

PARTICIPANT (female): Oh. The -- (Inaudible.) --

PARTICIPANT (female): Yes. There are bets that what a lot of what it was about is they were trying to find the right system to -- (Inaudible.) -- That's basically what they found out.

PARTICIPANT (female): They might want to point out that unless -- (Inaudible.) -- recently married -- (Inaudible.) --

PARTICIPANT (female): I specifically didn't mention that. I didn't even tell them that.

PARTICIPANT (female): Oh, thank you.

I wonder if Mike's coming. Do you want to stick your head in and see if he's in there?

PARTICIPANT (female): Well, he wasn't when I just walked by but...

(Pause.)

PARTICIPANT (female): No, he's not.

PARTICIPANT (female): Well, hell. I don't know --

PARTICIPANT (female): He could did the end around and went to -- (Inaudible.) -- and apparently -- (Inaudible.) -- has responded that we don't have any information regarding this particular piece of property.

PARTICIPANT (female): I bet I know where Mike went. He said he thought he might know what happened to that DNH mortgage because -- 15 minutes ago we were talking about this, Jane.

PARTICIPANT (female): My butt's on the line, which doesn't bother me, because I'm the one who told him it was a non-performing loan. Based on whatever that sheet was Richard showed me that one day that listed it on there. And I don't even know what information was on -- (Inaudible.) --

PARTICIPANT (female): The only things that I have that -- (Inaudible.) -- were my copy of this property database that I've done where I note on

here three transactions dealing with lot two of the Scott Hamilton addition.

PARTICIPANT (female): Lot two?

PARTICIPANT (female): Yes.

PARTICIPANT (female): I thought he was asking about lot 12.

PARTICIPANT (female): Well, it might be lot 12. I might be wrong. But what I've got down here is lot two. And then the other thing that I had was a copy of the mortgage from D&H Construction to Madison Guaranty.

PARTICIPANT (female): For that property.

PARTICIPANT (female): For $30,000.

PARTICIPANT (female): For that piece?

PARTICIPANT (female): Yes. It said Scott Hamilton, lot two. $30,000. Section 32, lot two. And here's what Mike and I were beginning to get into on this -- PARTICIPANT: Where are they?

PARTICIPANT (female): This was the southeast corridor of the northwest corridor of the north half of range 12, township one, north. That is the legal description of lot two of the Scott

Hamilton addition.

PARTICIPANT (female): It is?

PARTICIPANT (female): Yes, it is.

Now, here is the rest of this interesting stuff. Lot -- Excuse me. Range 12 west and range 11 west all abut each other and it's all either owned by Castle Grande or International Paper Realty, which is real interesting to me. But it's not by Castle Grande.

Come on in.

PARTICIPANT: Checked all his favorite hiding spots and he was sitting over talking to Ed.

PARTICIPANT (female): Well, thank you so much for ferreting him out.

So.

PARTICIPANT: Is this the -- (Inaudible.) --

PARTICIPANT: -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT (female): I was trying to fill her in on what we were talking about not 15 minutes ago about the Scott Hamilton addition and the

way that whole thing plays in there. It looks like the whole Castle Grande property -- and Mike and I flow charted this the other day too so let's start by walking through that and then let's see where Scott Hamilton fits into it, okay?

Madison Financial bought everything south of 165th -- (Inaudible.) --

PARTICIPANT: 145th.

PARTICIPANT (female): 45th. 145th Street. Seth Ward bought everything north of 145th Street -- (Inaudible.) -- Seth Ward then sold off his property in five separate purchases. Are you up to speed on this?

PARTICIPANT (female): Sort of. Some of it.

PARTICIPANT (female): Okay. He sold the first batch, which was the Levi Strauss warehouse, to David Fitzhugh. The second purchase, that was to Jim Guy Tucker and it was the 35 acres right off of Pratt Road and Highway 65.

PARTICIPANT: That was for Castle Sewer.

PARTICIPANT (female): No.

PARTICIPANT: No?

PARTICIPANT (female): That was not Castle Sewer.

PARTICIPANT: Oh, no. That was Hullman -- Hullman Acres. That's the one we thought was on with him in '93.

PARTICIPANT (female): That's Hullman Acres. -- (Inaudible.) --

PARTICIPANT (female): Is that the $260,000 loan?

PARTICIPANT (female): That's it.

PARTICIPANT (female): That's the -- (Inaudible.) -- then.

PARTICIPANT (female): Come in.

PARTICIPANT: Can't. You've got the door locked.

PARTICIPANT (female): It's going to stay locked too.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT: She's meeting with Ken now about something else so then you'll be able to meet with her separately and distinctly.

PARTICIPANT (female): With me and Ken or just me?

PARTICIPANT: Well, he didn't want to be in the same room with -- (Inaudible.) -- so it's going to be separate.

PARTICIPANT (female): Richard, go away. Just go away.

Okay. So we -- (Inaudible.) -- with Tucker in '93 on Hullman Acres. The third part of -- (Inaudible.) -- property that he sold went to Castle Sewer and Water. And that was that little utility district and he sold that to Tucker and Artie Randolph.

And then the fourth purchase was the purchase to J.W. Fulbright, and the fifth one was to Master Developers. And that fifth piece is the one that McDougal and the -- (Inaudible.) -- were actually tried on and acquitted.

Now, all of that is everything that's north of 145th Street. So we were going to property database. And what's north of 145th Street is in range 11, township -- range 11 west, township one

south.

Now, you get into range 12 west, township one north. That's also property that was owned by Industrial Development Company and sold to NASA Financial Corporation. There was a mortgage on that property from Industrial Development Company, IDC -- the same people that had previously sold them the property in range 11 west for $1.74 million. -- (Inaudible.) -- So evidently IDC owned all that property in both of those ranges and one part of the loan was at Union National and the rest of the loan was at Commercial National. So they had major bucks tied up in that property.

PARTICIPANT (female): This is all across the street from each other, am I right?

(Simultaneous discussion.)

PARTICIPANT (female): It's either north, south, east or west of 145th, that intersection.

PARTICIPANT (female): Okay.

PARTICIPANT (female): Now, that part of the property that Industrial Development owned and had mortgaged to Commercial National Bank, that's

where part of the Scott Hamilton addition falls because --

PARTICIPANT (female): I was just talking to somebody from Willow Rock though, who said that the Scott Hamilton addition is like in the southwest Little Rock area but Castle Grande is like in the east or something.

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): What I couldn't understand how they could be tied to each other.

PARTICIPANT (female): I could figure it out either but if you take a plat -- and this is what Mike and I were just saying -- if we could get a plat of all these legal boundaries as far as where one range stops and one range starts and the townships, et cetera, et cetera, and plat this thing out I think we would find what abuts what. Because if you've got range 12 and range 11 we have no idea how big they're calling a range. I mean, how many miles it's covering, how many acres does it cover? How many feet does it cover? It could be tiny, it could be huge.

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): That being the case then it's conceivable that Industrial Development when it owned all that property, they sold one chunk off to Madison Financial and Seth Ward and then they sold another chunk off just to, I think, Madison Financial. Because what I've got here is in '81 Industrial Development had a $1.7 million mortgage with Commercial National Bank, including that section called the Scott Hamilton addition. And then in October of 1985 there's a warranty deed from Industrial Development to Madison Financial Corporation -- no consideration for it, no mortgage. Just a warranty deed -- for the same piece of property, the Scott Hamilton addition. And then on October 29th -- 20 days later -- Madison Financial deeds it over with a mortgage to D&H Construction for $30,000. Is any of this making sense?

PARTICIPANT (female): But we're -- we're talking like mid-'80s here now, right?

PARTICIPANT (female): Mid-'80's, '85. Yeah. Right.

PARTICIPANT (female): Okay. So even if that loan was made in '85 it was probably all gone by the time we walked in the door.

PARTICIPANT (female): I imagine it probably was.

PARTICIPANT (female): And that's why it's not showing up on any of the records --

PARTICIPANT: Well --

PARTICIPANT (female): Did we find a D&H loan file?

PARTICIPANT: -- that's a parcel. Isn't that a parcel?

PARTICIPANT (female): Yes. That's just a parcel.

PARTICIPANT: And we're talking about one little lot, I think.

PARTICIPANT (female): Jane, that's section 32.

Now, the only thing I've got identified here is tract 14, section 32. And that is what Industrial Development --

PARTICIPANT: But a tract can be more than

one lot.

PARTICIPANT (female): Yes.

PARTICIPANT: That's the problem. We're looking for a lot 12, I think.

PARTICIPANT (female): -- (Inaudible.) -- lot 12.

PARTICIPANT (female): Well, this says lot two. So maybe I'm wrong, Jane. Maybe it is lot 12.

But the bottom line is IDC deeded this thing over --

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): No, but I looked for it. It might be in Randy's records.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): That might be in Randy's records.

PARTICIPANT: Wait a minute. I think I know exactly where it is. I'll be right back.

PARTICIPANT (female): So the warranty deed was from Commercial National to Madison Financial or it was from the commercial paper company or -- who was the first warranty deed from?

PARTICIPANT (female): Industrial Development Company, IDC.

PARTICIPANT (female): Okay.

PARTICIPANT (female): That's the same people that sold the property to Seth Ward, Madison Financial for -- (Inaudible.) -- And with that I'm sure they paid off their loan at Union Loan Bank.

PARTICIPANT (female): Yeah. Uh huh.

PARTICIPANT (female): But the other crazy thing about this -- and when Mike comes back we'll get into this a little bit -- we think we have a theory of what the D&H -- (Inaudible.) -- William Darby and Web Hubble.

PARTICIPANT (female): Well, I've looked through all of the assets that were in existence at the lifting of assets in existence at the time of the revolution and there's nothing in there for D&H Construction.

PARTICIPANT (female): Okay.

PARTICIPANT (female): And I've got another one that I'm going through right now in which that's not showing up either.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): No. April too. I know she was in town. -- (Inaudible.) --

PARTICIPANT (female): -- (Inaudible.) --

PARTICIPANT (female): Close the door.

PARTICIPANT (female): I think this is -- (Inaudible.) --

PARTICIPANT (female): But they even got her on the investigation -- (Inaudible.) --

PARTICIPANT (female): That's what I mean. I would like to know if there was somebody that I could go to to say 'Excuse me, but who exactly will be handling the telephone call from the New York Times or the Post or whomever when they call to find out why the attorney who made the initial decision in the first place is now completing the review of those decisions.' I'm sure as hell now going to answer that question.

PARTICIPANT (female): Did Richard tell you he went on the record as protesting --

PARTICIPANT (female): Yes, he did.

PARTICIPANT (female): Okay. The

impression I got from Richard in discussions I had with him since then is that -- (Inaudible.) -- and everybody else have specifically pointed her off in one moral direction and have told her 'You go check out Whitewater and Whitewater only.' And since it's very difficult to take Whitewater -- (Inaudible.) -- she can only do limited damage, and that's exactly the way Richard put it to me.

PARTICIPANT (female): Well --

PARTICIPANT (female): So she left me a note a little earlier --

PARTICIPANT (female): She didn't even get involved in the -- (Inaudible.) --

PARTICIPANT (female): Inconceivable.

PARTICIPANT (female): All right. I feel better now.

PARTICIPANT (female): I agree with you. And I'll tell you something I said to -- (Inaudible.) -- a little while ago too. This letter from Roger Altman to Al D'Amato -- have you seen it?

PARTICIPANT (female): I haven't seen that one.

PARTICIPANT (female): May I? I'll read it to you.

PARTICIPANT (female): Please do.

PARTICIPANT (female): "On January 11 and 25 you wrote to me concerning the statute of limitations relating to Madison Guaranty Savings and Loan. While I assure you that the Resolution Trust Corporation is conducting a thorough review of the potential civil claims it possesses as a result of the failure of Madison, the RTC is of course mindful of the impending February 28 anniversary date of the federal takeover of Madison.

If such claims do exist the RTC will vigorously pursue all appropriate remedies using standard procedures in such

case, which could include seeking -- (Inaudible.) -- statute of limitations. As you know, the barriers presented by the expiration of the statute of limitations in many cases has been ameliorated by the extension of the Financial Institution Reform Recovery Enforcement Act of '89. Statutes in the RTC Completion Act. The Act has afforded the RTC an opportunity to investigate further any civil claims which may be asserted against individuals or entities associated with Madison Guaranty for fraud, intentional misconduct resulting in unjust enrichment or intention misconduct resulting in substantial loss to the

institutions.

As you know, the RTC's jurisdiction is solely as to civil claims. Any potential criminal matters are within the jurisdiction of the Justice Department. Sincerely, Roger Altman."

PARTICIPANT (female): Well, excuse me, but when you've done the statute of limitations to five years on December the 28th or whenever it was that he signed the bill and February 28 is the next expiration of that five year deadline, and the previous deadline was three years then you tell me how much work you can get done in that less than two month period.

PARTICIPANT (female): You can't, Jane. And the key phrase in here to me was "using standard procedures in such cases." The hoops that we are jumping through right now are anything but standard procedures. The very fact that Washington has put together a "internal review team to come down here" -

PARTICIPANT (female): This is not standard procedure.

PARTICIPANT (female): Not even close.

PARTICIPANT (female): Well, somebody called me yesterday who was home sick to let me know that D'Amato was on C-SPAN ranting and raving about the non-cooperation from the RTC.

PARTICIPANT (female): Richard said the same thing.

PARTICIPANT (female): He needs to go back and review his vote and review the way that they structured the legislation because this is the body that created the problem, if there is a problem.

PARTICIPANT (female): Well, the bottom line in the statute of limitations -- (Inaudible.) -- for Madison would have expired, what? two years ago this February.

PARTICIPANT (female): Right.

PARTICIPANT (female): So we didn't look at it from a civil standpoint for two years.

PARTICIPANT (female): Right.

PARTICIPANT (female): And then when they enacted the -- (Inaudible.) -- legislation all of the sudden we have a tiny, tiny, little window --

PARTICIPANT (female): Exactly.

PARTICIPANT (female): -- that doesn't even give us breathing room.

PARTICIPANT (female): Exactly.

PARTICIPANT (female): But unfortunately it all comes -- (Inaudible.) -- on the heels of the criminal investigation.

And the other thing that irritates me about this is all the civil cases were closed out. -- (Inaudible.) -- closed the bond claim. They had closed the D&O claim and decided that there may have been merit based on what we've seen but there were no assets. So why spend the money on the litigation?

PARTICIPANT (female): Right.

PARTICIPANT (female): Which would have ridiculously expensive.

PARTICIPANT (female): Right.

PARTICIPANT (female): And in the third place, they had already sued the -- (Inaudible.) --

Company and they'd settled for a million bucks, which is a hell of a lot less than the six million which the policy was and -- (Inaudible.) --

Fine. End of discussion on the civil side. Everything's closed out. The only thing that was left open was the criminal side. So criminal comes in and does a rather thorough job, if I may say so. We did a team effort and got this thing done and we had to draw a line at some things because there was such excessive fraud at this -- (Inaudible.) -- that there was no way in hell we were going to be able to investigate every little act of criminology that we happened to stumble across, and there was a lot of it. So we drew a line at which ones we wanted to do. We took some from each end of the spectrum -- the little ones down to $50,000 and the big ones up to eight-nine million and everything in between. We did nine -- what? a total of 10 referrals.

So for Susan to come back now and start screaming and jumping up and down and the very idea that because this criminal investigation has caused such a brouhaha for PLS to get back in the middle of

it and start issuing the directives after they closed up their claims -- I'm sorry, I have a problem with that.

PARTICIPANT (female): I know.

PARTICIPANT (female): And then for them to let -- (Inaudible.) -- come down here.

PARTICIPANT (female): Yes. I feel exactly the same way.

PARTICIPANT (female): -- (Inaudible.) --

PARTICIPANT (female): I don't know.

PARTICIPANT (female): She's the one who hired the Rose firm.

PARTICIPANT (female): I know.

PARTICIPANT (female): Anyway, I'm sorry. I got off track. I was going to look in here. Mike told me to look for something. Oh, yeah. -- (Inaudible.) --

Hello?

PARTICIPANT: Password, please.

(Laughter.)

PARTICIPANT: Just me.

I did not find it. I thought I knew where

it was because I'd seen it again since we were looking for it and I can't find it again.

PARTICIPANT (female): I do have the password now. I've decided what it's going to be.

PARTICIPANT: What?

PARTICIPANT (female): Another fine acronym.

PARTICIPANT: What?

PARTICIPANT (female): BOHICA.

PARTICIPANT: BOHICA?

PARTICIPANT (female): Uh huh.

PARTICIPANT: What does that mean?

PARTICIPANT (female): Bend Over, Here It Comes Again.

(Laughter.)

PARTICIPANT (female): I think that's very appropriate under the circumstances.

We were just ranting and raving a little bit about Al D'Amato's letter -- or Altman's letter to D'Amato. And the fact that they've allowed Ms. -- (Inaudible.) -- to come down here and -- (Inaudible.) --

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): No.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Yes. -- (Inaudible.) -- If I get the call from -- (Inaudible.) -- saying 'The individual who originally hired the Rose law firm is now conducting the internal review. Can you explain that to me?' I'm going to say 'Well, certainly. -- (Inaudible.) --

(Laughter.)

PARTICIPANT (female): And I thought we'd refer you on to the attorney who is conducting the review.

PARTICIPANT (female): Which would be -- (Inaudible.) --

(Laughter.)

PARTICIPANT (female): I mean, I'm sorry. I've always had very good feeling for her.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): No, not at all. But in principle I just don't think that it looks right.

PARTICIPANT: I agree.

PARTICIPANT (female): Well, this property database is this a property database of Madison properties?

PARTICIPANT (female): No, Ma'am. It is not.

PARTICIPANT (female): What is this property database?

PARTICIPANT (female): This particular property database is the result of a five day trip that Randy Nide and I took through Arkansas in May of last year. We drove from county to county and went to four or five different county courthouses, all the way down from Bulaski County to the county south of there -- I can't remember which one it is -- all the way up to -- (Inaudible.) -- which is the county seat of Marion County, where Whitewater is.

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): And we pulled records. We went in specifically looking for documents that pertained to a couple of the referrals that we were already working on at that point. But

as we went through and we found other documents that pertained to McDougal and Madison Financial or Madison Guaranty or any of the other target suspects that we had at that point in time, like Jim Guy Tucker or Steve Smith or either of the McDougals or people like that, if we saw stuff like that just at random or at happenstance as we were going through the grantors and grantee -- (Inaudible.) -- or the mortgages or the financial statements we copied them. And that's -- this database is a cumulative result of everything that we found in five counties and copied.

PARTICIPANT (female): So why was this one? Because of Madison Financial's connection, is that why you would have found that?

PARTICIPANT (female): Uh huh. Industrial Development we would have pulled because we recognized it just as part of Castle Grande. And although we weren't doing a referral on Castle Grande I felt the need to understand it so Randy and I pulled a certain amount of documentation relating to it.

PARTICIPANT (female): Okay. So the

bottom line here is at some point there was a warranty deed from -- a warranty deed and $30,000 mortgage from Madison Financial to D&H construction.

PARTICIPANT (female): D&H Construction. Right. And the date of that was October 29th of 1985. And although I don't have the mortgage number here, I do have the document number on the warranty deed if that would be of any assistance to you at all.

PARTICIPANT (female): Okay.

PARTICIPANT (female): It's 8559642.

PARTICIPANT (female): Document number on the warranty deed. So that would be something that the county would have --

PARTICIPANT (female): You bet. That's the document number recorded on the document at the time it was recorded and that's how it's filed. And it's going to be on fiche or film. It's going to be on film.

PARTICIPANT (female): Down there.

PARTICIPANT (female): Yes. In the Pulaski County courthouse, which is where that was

pulled.

PARTICIPANT (female): But if there was a mortgage that was issued by Madison Financial to D&H Construction then somewhere in the boxes of files on Madison Financial there should be a copy of this mortgage.

PARTICIPANT: There could be.

PARTICIPANT (female): There could be. It could conceivably be --

(Simultaneous discussion.)

PARTICIPANT: We have all the records that --

PARTICIPANT (female): Right.

PARTICIPANT (female): The mortgage, I think -- Jane, I'm going to back up on that. The mortgage I think was for Madison Guaranty to D&H Construction. They made them the loan to buy the property from Madison Financial. And 10-1 Susan McDougal got a commission on it.

PARTICIPANT (female): Madison Guaranty made a loan --

PARTICIPANT (female): The mortgage loan.

PARTICIPANT (female): -- to buy it from Madison Financial.

PARTICIPANT (female): Right. And that was the only loan that -- that's the only way we found any evidence of a loan to D&H Construction, because I don't think we found it in the -- (Inaudible.) -- records, and I believe we looked.

PARTICIPANT (female): So you have tried to pull everything on D&H or whatever?

PARTICIPANT (female): Yes. The first time you raised this question we went and we revisited some of the records. But the only reason I even knew what the Scott Hamilton addition was because of this database. But the more Mike and I talked about it and looked at the Castle Grande stuff the more these puzzle pieces are beginning to fall in place.

And I told her our theory, Mike, about what D&H might stand for.

PARTICIPANT (female): There wouldn't have to be any record of that in the secretary of state's office, right? of who D&H Construction is?

PARTICIPANT (female): Not necessarily. If it's a privately owned company all it's got to have is a registered agent on file and that's it.

PARTICIPANT (female): Okay. Then we don't know who --

PARTICIPANT: I was going to ask you, do you remember the -- this doesn't have anything to do with -- (Inaudible.) --

PARTICIPANT (female): Okay.

PARTICIPANT: The -- (Inaudible.) -- Realty Company --

PARTICIPANT (female): No. I tried for two or three days to find out who that was too.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): No.

PARTICIPANT: Okay. -- (Inaudible.) --

PARTICIPANT (female): It's some kind of -- (Inaudible.) -- entity. The attorney who handled that transaction is Mike Alstrum of RTC, but I don't know if it would be worth a call to him. When I asked him originally he didn't know.

PARTICIPANT: He didn't know either.

PARTICIPANT (female): Of course, that was like in March of last year. And I think I called the guys down at FCI and they were the ones who thought that it was --

PARTICIPANT: Who is FCI?

PARTICIPANT (female): Financial Conservators, Inc. They were the ones, I think, who told me that they thought that -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT (female): Well, what do you think I should do about this? I don't really know what to tell these guys. I mean, for sure --

PARTICIPANT: You don't know anything.

PARTICIPANT (female): Right. But see, I'm the one who is on record telling them -- (Inaudible.) --

PARTICIPANT: Well, I got the impression from Kate that -- (Inaudible.) -- and he didn't know where he got that.

PARTICIPANT (female): Okay.

PARTICIPANT: That last e-mail I got from -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT (female): -- I did not have any documentation to back that up and that I'd have to do some more research on it. He took it, you know, -- (Inaudible.) -- I don't even know where to begin to search for records on this. If you guys haven't come up with anything on this I'm sure I couldn't.

PARTICIPANT (female): Well, I think the place he needs to start is he needs to call the county courthouse in Pulaski County --

PARTICIPANT (female): He's been there.

PARTICIPANT (female): -- and he needs to find out mortgage.

PARTICIPANT: Is he the one that says that it's not there?

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): Excuse me? Eversaul says these documents don't exist in Pulaski County?

PARTICIPANT: No. Well, he's talking about lot 12, the Scott Hamilton addition. Not

necessarily -- (Inaudible.) --

PARTICIPANT (female): Right. This is lot two that we're talking about here?

PARTICIPANT (female): Jane, let me back up on this one. He called you. Did he say D&H Construction?

PARTICIPANT (female): This is all he has: 6100 Scott Hamilton. He thinks there's a warehouse on it. What can I tell him about it? That's all he has. He thinks that Web Hubble's the borrower. That's how Web Hubble came into this. He thinks that Web Hubble was the borrower and he thinks that it was refinanced somewhere along the line. Well, $30,000 --

PARTICIPANT (female): They're not going to refinance a commercial warehouse -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT: $30,000 would have bought them property but not with a warehouse on it.

PARTICIPANT (female): Right. I mean, I'm guessing that any subsequent building that was done

on it was probably financed through somebody else maybe. I don't know. Or it's another company that there's a loan to that -- (Inaudible.) --

PARTICIPANT (female): Wait a minute. If this refinanced there's a connection here that we're missing. This is the only person that any of us are aware of in Little Rock, Arkansas that has enough independent wealth to literally hold a mortgage for somebody or refinance something for somebody if he wanted to.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Seth Ward.

PARTICIPANT: Seth Ward, yes.

PARTICIPANT (female): Seth Ward has great big bucks and he is conveniently well funded -- (Inaudible.) -- father-in-law.

So he might want to go back -- Mr. Ingersal might want to go back and question Mr. Ward as to whether or not he's involved in that warehouse. But we can't -- (Inaudible.) --

PARTICIPANT: Ward would have been the one who sold it to them.

PARTICIPANT (female): If that property was ever purchased or sold technically there has to be a record of it in the Pulaski County courthouse in Little Rock. He's obviously not looking in the right place. If he says he's been down there he's probably jerking your chain.

PARTICIPANT (female): Oh, he's been down there. I'm positive he's been down there. I haven't talked to him since he's been to the courthouse. I don't know what he tried to look up in the courthouse but...

PARTICIPANT (female): Well, I've been to the courthouse and the gal that runs that thing down there knows those records. It's really good because you can give her a street address and she'll say 'Okay, boom. Here's what the legal description is going to be.' Or if you have a street address you can go and look up the address and it will cross reference you to the legal description, which will cross reference you to where the mortgage is.

PARTICIPANT: We used to call her and have her cross reference the street address.

PARTICIPANT (female): Okay. Can you give me the street address?

PARTICIPANT: 6100 --

PARTICIPANT (female): 6100 Scott Hamilton.

PARTICIPANT (female): Are you saying that's the street address?

PARTICIPANT (female): Uh huh. That's what he's given me.

PARTICIPANT (female): All right. I'll call --

PARTICIPANT (female): I don't know where this lot 12 came in.

PARTICIPANT: That's something Kay told me, I think. That he -- that Phil had gone back and asked Ingersal on.

PARTICIPANT (female): I mean I don't know if the legal description will describe it as lot 12.

(Simultaneous discussion.)

PARTICIPANT (female): I think what Jenny is going to come back and tell me, if I give her that much she'll probably come back and tell me what his

is. Range 12, township -- (Inaudible.) --

PARTICIPANT (female): Well, if it is then we are talking about --

PARTICIPANT (female): Apples and apples.

PARTICIPANT (female): If it's 6100 Scott Hamilton addition -- if it is.

PARTICIPANT (female): Yes?

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): You are such a pain in the butt some days.

PARTICIPANT: I know. Today's one of those days.

(Simultaneous discussion.)

PARTICIPANT (female): Needless to say, it sounds to me like these were all transactions that were concluded far in advance of our involvement, which means that he still has to file Freedom of Information requests to have somebody even do this research.

PARTICIPANT: Which he's done.

PARTICIPANT (female): I don't think he's filed one on this particular property. The Wall

Street Journal filed a formal request for a listing of all of the assets from Madison Guaranty.

PARTICIPANT: He was going to give me his -- (Inaudible.) -- request. I remember she did say that this particular one isn't done.

PARTICIPANT (female): Did they stipulate a time frame in that period?

PARTICIPANT (female): On the -- (Inaudible.) --

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): No. They can't stipulate a time frame. We're supposed to respond to every single thing within 10 days.

PARTICIPANT (female): Oh, no, no, no. I'm sorry. I'm misstating my question.

PARTICIPANT: Target area.

PARTICIPANT (female): Target time frame as far as which assets during what time frame.

PARTICIPANT (female): Oh. I don't think so.

PARTICIPANT: That's the thing Phil's trying to get out of Ingersal now.

PARTICIPANT (female): Okay.

PARTICIPANT: Give us a better legal description or give us a time frame of when you think a loan was made.

PARTICIPANT (female): Right. Because he's done nothing. He's just coming at us with this address.

PARTICIPANT (female): Well, okay. Let's leave it like it is right now. Let me call Jenny and see --

PARTICIPANT (female): That would be great.

PARTICIPANT (female): -- what kind of a legal description I can get from her based on that address. -- (Inaudible.) -- and if they do maybe by then we can come up with something. Because all we've got right now is D&H Construction and a $30,000 mortgage. And if he thinks that's a commercial warehouse there's no way in hell $30,000 bucks is going to buy a commercial warehouse.

PARTICIPANT (female): Right. Right.

PARTICIPANT: What's he trying to find

out?

PARTICIPANT (female): He's trying to find out if Web Hubble's connected with this. That's what I think he's trying to find out.

PARTICIPANT: He thinks the H is Hubble?

PARTICIPANT (female): He doesn't know --

PARTICIPANT (female): Mike and I have a theory about that one. We think the D&H, if in fact Hubble is involved -- and we have no proof, this is just theory -- it could be a combination of Web Hubble and William Darby. William Darby was very tied up in the Madison and the Darby loan.

PARTICIPANT: Darby was a fried of --

PARTICIPANT: If you get someone we can find out who holds title?

PARTICIPANT (female): It just so happens that I happen to be very tight with the gal in the county clerk's office that runs the records department there. So if I call Jenny and I give her a street address she can probably give me the legal.

(Simultaneous discussion.)

PARTICIPANT (female): Yes. I'm sure we

can find out who holds title now.

PARTICIPANT: So can he.

(Simultaneous discussion.)

PARTICIPANT: What he's asking for is not what you think he's asking for.

PARTICIPANT: Right.

(Simultaneous discussion.)

PARTICIPANT (female): He doesn't. But I think he thinks he's asking me for something else but I'm not understanding what he's asking for, and apparently neither is -- (Inaudible.) -- and anybody else.

PARTICIPANT (female): Well, maybe he's going for some of the conclusions that Mike and I have already come to. Because it's real interesting, Richard, it seems that all the adjacent property to what Industrial Development Company owned and then sold as Castle Grande to Madison Financial -- (Inaudible.) -- all the adjacent property was owned by International Paper Company. And a large chuck of that is what McDougal purchased without -- allegedly without the Clinton's knowledge for Whitewater

Development. Well, smack in the middle of all of this tangle -- (Inaudible.) --property falls the Scott Hamilton addition. Because it's in the same range and township as all the other IPC property that they bought and sold.

PARTICIPANT (female): So the Scott Hamilton addition is something completely different from the Scott Hamilton street?

PARTICIPANT (female): I don't know. That's what I've got to find out from Jenny.

PARTICIPANT: I would assume it's in the same addition.

PARTICIPANT (female): If I call Jenny -- I know what to ask her. If I call her and say 'Is there a Scott Hamilton Street in Little Rock --

PARTICIPANT: There is.

PARTICIPANT (female): Okay, fine. That's the first question.

PARTICIPANT: I called Don Sipers because he lives in Little Rock.

PARTICIPANT (female): Well, if I call Jenny and say 'How long does it run? What part of

town is it in? Does it run through this range and this township? Is it part of the legal description of Scott Hamilton?'

PARTICIPANT: An awfully long street to get out to Whitewater, wouldn't it?

PARTICIPANT (female): -- (Inaudible.) --

Richard, what was that that you showed me when I originally asked you about this --

PARTICIPANT: It was the picture that you gave me.

PARTICIPANT (female): -- (Inaudible.) --

PARTICIPANT: You had a grid. You had a grid.

PARTICIPANT (female): I had the grid. I had the mortgage. And I showed all that to you and I haven't found it since then because I think I gave you my copy.

PARTICIPANT: And I went and showed it to Jane but I brought it back down.

PARTICIPANT (female): What the hell did you do with it when you brought it back down.

PARTICIPANT: I laid it on your desk.

PARTICIPANT: Oh, that was a fatal mistake.

(Laughter.)

PARTICIPANT (female): You're responsible. You get Bob to check the files and see if you still have that because I haven't been able to find that D&H mortgage since that day.

PARTICIPANT: I brought it back.

PARTICIPANT (female): I don't have it. I've gone through everything and I -- (Inaudible.) --

PARTICIPANT (female): The only file -- and I'm compulsive about this. The only file I would have put it in is right here in my lap and it's not in there.

PARTICIPANT: I just laid it on your desk.

PARTICIPANT (female): That was a fatal mistake, you know that. You see what my desk looks like.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): I imagine Jenny probably could.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): I'll call her and see what she says.

PARTICIPANT (female): Thanks.

PARTICIPANT (female): Meanwhile, if you all will excuse me, I'm still having a little bit of leftover from yesterday. I have to make a -- (Inaudible.) -- thank you very much.

(Simultaneous discussion.)

PARTICIPANT (female): Jane, give me tomorrow to get a hold of Jenny since it's getting so late. I'll let you know.

(Simultaneous discussion.)

(End of side 1 of tape.)

PARTICIPANT (female): Note to self on Darnell Development Corporation. I need to get back to Jane -- (Inaudible.) -- on this about this $300,000 loan to Darnell and Hale. I also need to look at this Crim family tree in the documents that Jane gave me. And I need to review the rest of these Darnell documents. I need to remember to pull a loan file on Darnell Development and see if we have any --

(Inaudible.) -- We should at least have a copy of it. And see what I can track down on the 10 percent commission to Susan McDougal.

In addition, I also want to go back and -- this just triggered it -- I want to look at the check between Wilson and McDougal and the ties to Cantebello on that. More on this later.

Wilson, as it turns out, is evidently one of the principals of the Central Bank & Trust, that actually purchased Madison Guaranty and turned it into Central Bank & Trust. There is quite a bit of a relationship there between Jim McDougal and Bob Wilson and I think I need to have another look at that and see if it's anything worthy of turning over to the IG. I think something's already been sent to IG about this but I'm not positive so I need to go back and track it down.

(Pause.)

PARTICIPANT (female): Whether under normal circumstances we would be so preoccupied with Whitewater I don't know but, you know, because that's the catch word and everything -- (Inaudible.) -- they

seem to ask and ask and ask --

PARTICIPANT (female): That seems to have become a catch-all phrase.

PARTICIPANT (female): Yeah.

But I think that somehow or other we're going to have to -- this group eventually is going to have to make some kind of statement about whether or not there is any loss to Madison by virtue of Whitewater. Because everybody -- (Inaudible.) -- they had no loan there so that crosses off the most obvious choice. And you know better than I do, so many checks went in and out of there that it's hard to say exactly what happened in that checking account.

What I should have brought along and didn't was Gary had given me a kind of a ledger -- or not a ledger but a statement of debits and credits from Whitewater. And he also had found this by the time I got here -- he had one folder of material that --

PARTICIPANT (female): -- (Inaudible.) -- right here.

PARTICIPANT (female): Okay.

He had one folder of material that had these work papers in it. It happened to be from Maple Creek Farm. So my first question is is there anything else like this, this kind of a listing for the other projects.

PARTICIPANT (female): -- (Inaudible.) --

PARTICIPANT (female): Now, the thing is, looking at the -- and, of course, I didn't bring along the chart that -- (Inaudible.) --

(Simultaneous discussion.)

PARTICIPANT (female): On the sheet that Gary had given me, and for all I know -- (Inaudible.) -- it shows money in and out of the Whitewater checking account. When I look at it -- the problem is that the date -- this is 1985 but it doesn't really show when. I can see on there that in April of '85 Whitewater wrote a $30,000 check to McDougal and there are notes in there about it becoming a cashier's check and then who knows what happened to it.

PARTICIPANT (female): Well, we all know

what happened to it after it became a cashier's check.

PARTICIPANT (female): What?

PARTICIPANT (female): We subsequently found out -- (Inaudible.) -- ongoing investigation. After McDougal put that $30,000 -- he voted himself, or Madison Financial gave him a $30,000 bonus -- (Inaudible.) -- previous years performance with Madison Financial. So he took that $30,000 and he told Greg Jones, who was the CFO at the time, to deposit it directly in my lawyer's account -- which he did. At the time that deposit was made Whitewater's account was overdraw to the tune of almost $28,000.

PARTICIPANT (female): Oh, okay.

PARTICIPANT (female): Where the 28,000 had gone or what caused the $28,000 overdraft in the account was a check that had been written for a cashier's check to Madison Guaranty and that cashier's check for $30,000 was made payable to Earthmovers -- excuse me. It was made payable to -- I'm trying to think -- It was endorsed by

Earthmovers, Inc. but there was no payable to Earthmovers, Inc. It was endorsed by J.W. Fulbright --

PARTICIPANT (female): Oh.

PARTICIPANT (female): -- and deposited to Riggs National Bank, Washington, D.C. That's what caused the overdraft. So McDougal had Madison Financial give him a bonus for $30,000, which they put in to cover the overdraft.

PARTICIPANT (female): Well, I guess then I don't know -- maybe --

PARTICIPANT (female): You want to know how the -- (Inaudible.) -- development ties in?

PARTICIPANT (female): Now, this -- is this account -- this account must have been at Madison -- the account -- I guess I'm confused. When you say Madison Financial gave him a bonus then is it appropriate to think that this entry in here is related to that? Or maybe not.

PARTICIPANT (female): I don't think there's any relationship. That is a copy of a piece of documentation that I found in the files that

belonged to Ray Young, who is the former CFO of both Madison Guaranty and Madison Financial.

That's just a ledger sheet that -- (Inaudible.) -- It appeared that he had done them on some of the other Madison Financial Developments in addition to Maple Creek Farms. But that is the only place I saw any tie to Whitewater Development per se. And it made no sense why they would zap Whitewater $30,000 for an engineering survey on property that Whitewater had no technical or legal ties to that we could find.

PARTICIPANT (female): Yeah. Okay. So you've already looked into this and -- I looked at the one folder that was there and I didn't see any other Whitewater entries so I'm assuming what you're saying is that is it in terms of these kind of ledger sheets. Yeah. Okay. Yeah.

See, it's that kind of crap that -- and the thing of it, I don't know if it gets us to an answer or not because obviously this money could go into Whitewater and then money came out of Whitewater so what you end up net at the end is still a question

mark.

I think if they can say it honestly, the head people -- Jack Ryan and Ellen Kulka, would like to be able to say 'Whitewater did not cause a loss to Madison.' We don't know, you know, what Fiske is going to find and we don't offer any opinion on it. But the problem is nobody has been able to say to Ryan and Kulka, 'Sure, say that, that's fine.' Because, you know, even though Whitewater did not have a loan it's been these kinds of things that mean there was a loss that is hidden so that...

I don't know if there's any other way to research, you know, whether -- and I'm sorry to ask the same question that I'm sure others have asked -- did Whitewater cause a loss. How we could get to a more definitive answer. I mean, I guess from -- (Inaudible.) -- I looked at them quickly and I'm sure you're much more into them but -- (Inaudible.) -- more research is needed to trace proceeds. So would you assume that the special prosecutor is probably out trying to trace the end of the Whitewater -- (Inaudible.) --

PARTICIPANT (female): Based on what Mr. Fisk has said to the press, which is absolutely nothing, you and I are in the same boat on that one.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): I have no idea what he's doing.

All I know at this juncture is what the allegations were -- (Inaudible.) --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And Whitewater development was a part of a whole. There were 12 McDougal controlled entities -- and I'm calling them McDougal controlled because I don't know how much control is exerted over any of these other entities by any of McDougal's partners. I know that some money came in and out and went to various parties -- Keith Smith, Jim Guy Tucker -- and it's real difficult to take Whitewater as one piece of this -- (Inaudible.) --

PARTICIPANT (female): Yes. That's a good point. That's a good point.

PARTICIPANT (female): We're trying to

isolate one microbe out of an amoeba and it doesn't work.

PARTICIPANT (female): Yeah. That's a good point. That's a good point. And that's contrary to the way McDougal ran the bank. He was purposefully commingling all the funds.

PARTICIPANT (female): I believe he was purposefully commingling the funds. And I will tell you my assessment of the facts based on what Jim McDougal did this and the chronic overdraft situation that I found to be absolutely pervasive --

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): -- throughout the entire institution, from small DBAs to huge accounts, like Cantebello or Madison Financial overdrafts that's referenced in -- (Inaudible.) -- for $2.7 million.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): It ran the gamut. He was absolutely indiscriminate about what he approved and what he didn't approve. He let checking accounts go into the red on a regular basis,

including his own which was overdrawn at times by $200,000.

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): So from that standpoint I know that Whitewater over a six month period paid $70,000 in checks, the large majority of them going to the bank for what appeared to be, if I am to believe the notation in the memo -- (Inaudible.) -- payments on real estate that the development had purchased. And if that's the case then of $70,000 worth of checks that were written in the six month period of time over $60,000 of those checks were drawn on insufficient funds.

PARTICIPANT (female): Right.

PARTICIPANT (female): I mean you can --

PARTICIPANT: Right. That's a loan. That's an unsecured loan.

PARTICIPANT (female): It's an unauthorized loan, that's absolutely right. And if you make an unauthorized loan like that -- and that's a six month period, April. I had no way of knowing exactly what the check -- (Inaudible.) -- did over a

two year period of time.

PARTICIPANT (female): Yes.

PARTICIPANT (female): And if I went back and looked at all the available -- (Inaudible.) -- we have on this and we put the man hours into it that are going to actually take, which is the reason I can find my particular -- (Inaudible.) -- because it would have been counterproductive to do otherwise --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): If I did it two years I can almost promise you that the money coming in and out of that account, because of the activities that I found in such a short period of time, would easily exceed $100,000 and it would consistently come out of an account that -- (Inaudible.) --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): -- (Inaudible.) -- checks that came in every month were $284 and that's it.

PARTICIPANT (female): Huh.

Well, I wonder --

PARTICIPANT (female): If you want me to

sit here and give you an unequivocal answer to whether or not Whitewater caused a loss I can't do it. All I can tell you is what I found in -- (Inaudible.) -- and the allegations I have made that yes, I believe Whitewater caused Madison a loss just by virtue of the DEA account and the dollar amount of the unauthorized loans that McDougal approved going out through his corporation.

PARTICIPANT (female): Yes.

PARTICIPANT (female): And his business partners -- (Inaudible.) --

PARTICIPANT (female): I understood from -- (Inaudible.) -- and I don't know if this came from you or came from -- (Inaudible.) -- that somebody now has the ending balance on Whitewater -- (Inaudible.) -- I don't know if you have gotten that.

And one thing that -- (Inaudible.) -- asked me to do -- I guess I will give a shot at tomorrow -- is to call the acquiring institutions and confirm that, you know, did they assume responsibility for that account. You know, at this point I'm thinking that the U.S. attorney's office --

(Inaudible.) -- But they should be more cooperative with us given that --

PARTICIPANT (female): Well, at their end you guys have an available resource -- (Inaudible.) -- For criminal purposes this department can not go out and say -- (Inaudible.) -- 'Can you get us a subpena on this?' We can't do that. In criminal we have to go straight to the U.S. attorney's office and recommend to them what we think they need to -- (Inaudible.) -- If we had that power I could have answered a hell of a lot more questions -- (Inaudible.) --

PARTICIPANT (female): Sure.

PARTICIPANT (female): But we don't.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): So we defer to the appropriate authorities and the appropriate authorities and the appropriate authorities declined under what I would deem to be extremely questionable circumstances.

PARTICIPANT (female): Yeah. I don't know. I don't know what to say. That was after the

election?

PARTICIPANT (female): When the referral was declined?

PARTICIPANT (female): -- (Inaudible.) --

PARTICIPANT (female): The first referral?

PARTICIPANT (female): Yes.

PARTICIPANT (female): It was declined in November of last year -- (Inaudible.) --

PARTICIPANT (female): Oh. It was submitted in September of '92 and declined in November of -- (Inaudible.) --

PARTICIPANT (female): But again I'll go back to what I said, it's real hard to take Whitewater as one piece out of the pie. -- (Inaudible.) --

PARTICIPANT (female): That's true. I think that's very true -- (Inaudible.) --

Well, like I said, I feel self conscious asking that because in some ways it's kind of a silly question. But, you know, it's the kind of thing that they're looking for what they can say. And I do believe they want to say something honest. I don't

believe at all and I don't want to suggest at all that they want us to reach a certain conclusion. I really don't get that feeling. But -- (Inaudible.) -- happier than others, you know, because it would get them off the hook. -- (Inaudible.) --

PARTICIPANT (female): Well, I think I understand what you're saying there and I'll tell you what my perspective is on it. I will produce whatever answers are available on it.

PARTICIPANT (female): Yeah. That's right. Yes.

PARTICIPANT (female): And funnel them up to whoever needs them.

PARTICIPANT: Is this for you? I left you a copy.

PARTICIPANT (female): As far as what would make them happier with a response they would like to come back, I'm sure, with the politically correct response. But the bottom line to me is I don't know that they're going to be able to.

PARTICIPANT (female): Yes.

PARTICIPANT (female): And I'm not going

to do anything to facilitate that.

PARTICIPANT (female): No, no, no. And I want to make --

PARTICIPANT (female): And I tell you why I say this. Here is my logic in making that comment. The loan payments that came out of the Whitewater account are kited funds. And I say kited because all these other little companies consistently made deposits into the Whitewater account whenever there was a need to make some kind of a mortgage or real estate payment. The funds that came into Madison out of these other little accounts don't exist. The other accounts from writing checks are funds they did not have.

PARTICIPANT (female): Right.

PARTICIPANT (female): So it was absolutely a kite. There is no doubt about it.

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): Now, if you are in a real estate partnership with somebody and you've got 200-some odd thousand dollars in outstanding mortgages and bank notes that you've got to pay and

you're not making the monthly payments on them and you're assuming your business partner is, and if you're not putting any money into this that can be documented anywhere -- and I say this from the standpoint of all these people collectively: Steve Smith, Jim Guy Tucker and Bill and Hillary Clinton -- you have to assume your business partner is making the payments for you. And if he's making the payments for you that is to your benefit if you are a partner in that corporation.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And if you know his financial circumstances, you know his savings and loan is in trouble and insolvent and you've been in business with him for a long time, as all these people had been --

PARTICIPANT (female): Well, I don't know that the insolvent thing. I mean that's -- because I can't accept -- it depends on what point you want to say that.

PARTICIPANT (female): Okay. You have to look at -- I'm basing that on the -- (Inaudible.) --

and the conclusions that they drew that the S&L was in deep, serious trouble in 1985 can not be disputed.

PARTICIPANT (female): That's true. And I guess I can't accept that necessarily Bill Clinton had the federal exam, which was confidential.

PARTICIPANT (female): Oh, no. I'm not concluding that at all. I'm just saying that if your business partner is making loan payments to your benefit --

PARTICIPANT (female): That part I agree with.

PARTICIPANT (female): -- then you've got to question if those loan payments were being made and you're assuming that your business partner is making them and you know you're not putting money into it -- what's he doing? Taking it out of his pocket. Because if it's your business venture you've got to know what kind of cash flow is coming in and out of that venture. You can't tell you you're just walking away from it blind. I mean, these are business people. These people have an eye for detail. You're dealing with lawyers here. We're

dealing with people like Jim Guy Tucker and Hillary Clinton, they're attorneys. They have more sense than that. You don't turn a blind eye to your business investments.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And if you're not putting money in you have to wonder where the money is coming from that's making the real estate payments.

PARTICIPANT (female): That's a fair point. That's a fair point.

PARTICIPANT (female): I think it's a very fair point. And to that end I am saying that the funds that were kited out of that account served the benefit of all those business partners involved, all 12 of those corporations. And I would not take Whitewater out of it and single it out. I'd say all of those people at some point had to question where McDougal was getting the money to make the payments on all the mortgages that he was paying.

PARTICIPANT (female): Right.

And I guess whether there was any chance

that, from the point of view of these other partners who were not in it on a day to day basis, that they could have thought that the loss was valid. And that there was some type of income being generated from these projects. You and I know at this point the answer was no and, you know, all these projects were flops to one degree or another. And McDougal -- (Inaudible.) -- there's no question of that. But whether all of these other partners would have known that I don't know.

PARTICIPANT (female): Well, if all of these other partners got into the investments and then found that they were money losing ventures -- if you know in 1982 or 1983, say, that you've gotten yourself into what appears to be a money losing venture and you still have the overhead of this tremendous mortgage that you're having to pay and your business partner is making the payments because you're not really putting the money in then the question becomes if you knew it was losing money then, you knew it wasn't cash flowing so where was the money coming from to make the mortgage payments?

PARTICIPANT (female): Yeah.

PARTICIPANT (female): -- (Inaudible.) -- to $7-8,000 a month. Where was it coming from and why didn't anybody ask?

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): And I think those are very legitimate questions.

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): So can I say Whitewater didn't cause a loss or -- (Inaudible.) -- didn't cause a loss or any of the other entities that were combined partnerships of Tucker and McDougal and Smith and Clinton and/or any of the above?

PARTICIPANT (female): Uh huh. No -- (Inaudible.) --

PARTICIPANT (female): No. I'm not prepared to say no, they didn't cause a loss because I think if somebody actually sat down and researched that entire situation start to finish and took all of the 12 company accounts and accounted for every check that came in and out for a two year period of time --

What do you want? We're in the middle of a discussion. I know. I'm going to get her out of here shortly. She's got to go at 4:45 -- (Inaudible.) --

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): The stuff that copied was a small amount and I'm just going to be able to carry that back in my briefcase.

PARTICIPANT: -- (Inaudible.) --

PARTICIPANT (female): Okay.

PARTICIPANT (female): Terry, sorry I'm such a crab.

PARTICIPANT: Don't worry about it.

(Simultaneous discussion.)

PARTICIPANT (female): Well, to finish what I was going to say, if anybody actually went back and researched that, check in and check out of every single, solitary account and then managed to do a cash flow analysis on it all the way through Madison and see where it stopped and how much money was actually lost out of these fabricated, kited funds --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): -- you would wind up with hundreds of thousands of dollars in unauthorized loans that went out of there.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And I think realistically if Mr. Fisk and his team actually found enough records to do that, actually reconstruct something like that, the conclusion they would come to is yes, Whitewater Development, along with --

PARTICIPANT (female): Everything else.

PARTICIPANT (female): -- Madison Marketing, Penbrook Manor, Rolling Hills Manor and every other company named in that referral caused a collective loss to Madison.

PARTICIPANT (female): Yes.

PARTICIPANT (female): And the only way you can do that and break out Whitewater's individual loss is if you look at the whole and then you break them down one at a time when you finish the project.

PARTICIPANT (female): Right. Right.

PARTICIPANT (female): And you've tracked

-- (Inaudible.) -- straight to the institution. Otherwise you can't do it.

PARTICIPANT (female): Yes. Yes. No, that's true.

PARTICIPANT (female): But McDougal was in the habit of approving overdrafts and I will tell you at one point -- and I think I said this even in the referral -- there was one overdraft charge on one Whitewater check when it came through and it was refunded by Jim McDougal the next day.

(Laughter.)

PARTICIPANT (female): He -- (Inaudible.) -- it.

PARTICIPANT (female): Wow.

The thing of it is -- (Inaudible.) -- I wondered at the time that McDougal was prosecuted the first time if the reason that he was acquitted was that it was just too hard for the prosecutors to explain even those transactions in a way that the jury, you know, that they could meet, you know, the burden they need to in a criminal case, beyond the reasonable doubt stuff. You know the records have

always been crap and, you know, they are.

PARTICIPANT (female): The records have always been crap but if I can go in and pull out enough information to construct what we've constructed in -- (Inaudible.) -- then I assure you those records, although they are crap, if you dig deep enough the information is there and you can find it.

And what I was told by the FBI that worked the case the first time is the reason that the -- (Inaudible.) -- who worked it -- (Inaudible.) -- who were both excellent attorneys; I worked with both of them for the last two years. The reason they felt like they lost the case is because they could not prove beyond a reasonable doubt how McDougal got the money out of the bank and where it went.

PARTICIPANT (female): Uh huh.

PARTICIPANT (female): And they evidently didn't have the resources or the wherewithal or even sit down and look at all the little McDougal controlled entities that were in that association.

PARTICIPANT (female): Yeah. Yeah.

PARTICIPANT (female): The way McDougal got the money out was by funneling it through Madison Financial and these various developments and through commissions and fees. And we tried to prove the commissions and fees in the first trial but it didn't fly.

PARTICIPANT (female): Well, to come back to what you said before, which is to look at it as a whole, it may be that the only way to really prosecute this is to do it in a way that brings in the overall picture of the institution. I mean, to pull out one transaction or a set of transactions is, you know, -- (Inaudible.) -- Maybe, I don't know.

PARTICIPANT (female): To pull out one transaction or one set of transactions in a situation like a check kite is self defeating. They can not do it. And for the feds to go in, as it seems that they're doing in what I've read, and try and totally isolate just Whitewater is not fair because --

PARTICIPANT (female): That's right.

PARTICIPANT (female): -- and I will say this to you and anybody else who wants to hear it --

when the investigation of Madison started out and I found what looked to me to be the beginning of a check kite through Penbrook Manor, Rolling Manor -- (Inaudible.) -- who were all writing checks to each other that said "loan" in the memo --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): -- there's something that smells bad here. It is a standard investigations procedure to trace funds, to look at DDA accounts. And if you find something questionable you go for it.

Well, as I went through this Whitewater came up and there it was. So unfortunately, it got pulled in. So the intent was not Whitewater. The intent was to investigate Madison Guaranty from a criminal standpoint since all the PLS claims had already been closed out.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): The -- (Inaudible.) -- Company litigation had already been tied up. -- (Inaudible.) --

PARTICIPANT (female): No. No.

PARTICIPANT (female): Because they thought -- from what I understand --

PARTICIPANT (female): I think it's still true. I mean -- (Inaudible.) --

PARTICIPANT (female): There no assets.

PARTICIPANT (female): Yeah. Yeah. -- (Inaudible.) --

PARTICIPANT (female): So it's self defeating to get into that kind of litigative process and that kind of expense when you know there's no return on the -- (Inaudible.) --

PARTICIPANT (female): No, I think that's true. I mean, I --

PARTICIPANT (female): So it was all closed except criminal. And criminal went in and this is what we found.

PARTICIPANT (female): I understand. I understand.

I guess the criminal -- these older institutions -- I mean, I was there in '89 -- (Inaudible.) -- doing the best they could, and they were overwhelmed too. And I don't know that they

were that well organized to look at some of the things. So did you guys just basically just start from the top and go back through all the institutions and look at criminal things? One thing that's a little odd is that the criminal look at Madison sort of was later than the PLS claim and I guess I just don't...

PARTICIPANT (female): Well, just for the record, I'll tell you the Arkansas institutions originally started out, I believe, with the -- (Inaudible.) -- office.

PARTICIPANT (female): Yes, they did.

PARTICIPANT (female): -- (Inaudible.) -- they were transferred into the Tulsa office.

PARTICIPANT (female): Yes.

PARTICIPANT (female): The Tulsa office made me a job offer in the end of May of '91 and I started to work in July of '91 specifically for the purpose of handling or being the criminal coordinator for the Arkansas territory.

PARTICIPANT (female): Oh, okay.

PARTICIPANT (female): So at that point I

looked at all the Arkansas institutions that had failed and there were 18 of them. In talking with my two bosses at that point in time we made a determination that although some of them had been examined by the U.S. attorney -- there was -- (Inaudible.) -- Savings in Truman, Arkansas that had already been looked at by the U.S. attorney. They got -- (Inaudible.) -- and that was the end of that so there was no point in revisiting that one. There were some others that the U.S. attorney had looked at some referrals and said 'No, we're going to decline those.' But I went back and revisited them anyway because I felt like it was my responsibility since I didn't know what kind of work had been done on the rest of them.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): There was one I went back and revisited, First Federal Savings of -- (Inaudible.) -- OPS submitted three referrals; the U.S. attorney turned them all three down. I went in and investigated, sent them nine more. They reopened the case, they investigated. They have just gotten

their fourth conviction.

PARTICIPANT (female): Oh, good.

PARTICIPANT (female): So when I go in I start at the top and I work my way down. And I had Madison targeted at a specific point in time to go in and do an investigation and then there were circumstances that occurred within the Tulsa office after that article appeared by Jeff -- (Inaudible.) -- in the '92 New York Times.

PARTICIPANT (female): Yes. I wouldn't have remembered the reporter's name but, yes.

PARTICIPANT (female): I remember it because I kept seeing it on bylines at the top again and again on this deal.

I was asked if I had investigated Madison yet. I said 'Well, this is when I've got it scheduled for.' Then we made the decision well, let's go ahead and move it up at that point. And it was no big deal because the other one that I was working on I just kind of switched places with because I had just concluded the First Federal issue and was through with that and was ready to start on a

fresh investigation. So we switched around. I had it slated for investigation three months later.

PARTICIPANT (female): Anyway.

(Simultaneous discussion.)

PARTICIPANT (female): Hold on a minute.

(Phone call.)

PARTICIPANT (female): Anyway, that's kind of the brief history of how we got started --

PARTICIPANT (female): The thing is, I mean -- I mean, to make a list of things that are wild about this whole deal but the frenzy of the press -- and you read so many articles and people get one grain of a fact, you know, and go way far, you know.

PARTICIPANT (female): Some of what I've read in the press has been outright laughable it's been so inaccurate.

PARTICIPANT (female): Yeah. You know, and it's a business. You know, like their editors are pounding the table 'Get me a story about this somehow. Find another angle on this story.' You know, there was one in the Post on Sunday: "The Tax

Consequences of Whitewater." I mean, it wasn't -- I mean, under any normal circumstance how boring but they have to find, they have to find a story.

PARTICIPANT (female): Under any normal circumstances I think the U.S. attorney's office probably would have looked at the first referral I sent in and done exactly what they told me. And I'll give you a direct quote from Mac Dodson, who used to be the lead attorney over there under banks. "That's an excellent case of check kiting and it's prosecutable. The problem is it's political."

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And that's what he told me. I got the same thing from the FBI. It's very prosecutable but... And that but comes with three little dots behind it.

PARTICIPANT (female): I'm probably naive but it's shocking to me in a way that people -- I mean --

PARTICIPANT (female): I don't know what actually transpired once the thing got to Justice. I don't know for a fact anything happened beyond that.

All I know is it took them a year and two months to respond back to me and tell me that they had declined that referral on the basis of insufficient information. You saw the referral, April.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): It's in the exhibits. That's not insufficient information.

PARTICIPANT (female): No. No. Well, you know, what do they have grand juries for?

PARTICIPANT (female): Well, that's right. The problem is -- (Inaudible.) --

PARTICIPANT (female): Well, yeah. That's true. (End of meeting.)

(Pause.)

PARTICIPANT (female): The preceding conversation took place in my office on February 2nd. It lasted from approximately 3:55 until approximately 4:35 and the other participant in the conversation was April Breslaw, PLS attorney from Washington, D.C., who was sent down with the internal review team from the Washington office. Her specific orders according to what she told me were to investigate

solely the Whitewater aspect.

(End of tape.)

The CHAIRMAN. I'm going to suggest at this point that we take a 10-minute break, and I'm going to confer with Senator Sarbanes as to whether or not you want to extend that or whether we should start and take the opening panels on each side for 30 minutes or maybe take an hour for lunch, and I will confer with you after the break.

So we'll take at least a 10-minute recess with the idea that I want to confer with the Senator as to whether or not we should take a lunch period now, and I'll ask my colleagues to be part of that and give us your suggestions, or we should continue. So we'll recess at least for 10 minutes. It may be an hour, but it will be at least 10 minutes and we'll make that announcement after I have an opportunity to confer.

[Recess.]

The CHAIRMAN. It is our intent to attempt to give each side the half hour customarily allowed for the opening panels, and then we will recess for a brief lunch.

At this point, I recognize Mr. Giuffra.

Mr. GIUFFRA. Thank you, Mr. Chairman. Good afternoon. I'll be asking each of you a series of questions, and I'd like to begin with you, Mr. Iorio.

Now, you were the Director and are presently the Director of Investigations in the RTC's Kansas City office; correct?

Mr. IORIO. That's correct. The precise title is Director of Field Investigations.

Mr. GIUFFRA. In that capacity you have been responsible for investigations of 189 thrifts?

Mr. IORIO. That's correct.

Mr. GIUFFRA. In 21 States?

Mr. IORIO. Yes.

Mr. GIUFFRA. I believe you testified earlier that you're a former FBI agent.

Mr. IORIO. Yes.

Mr. GIUFFRA. Also a former bank president.

Mr. IORIO. Yes.

Mr. GIUFFRA. Am I correct that Ms. Lewis reported to you?

Mr. IORIO. No. She reported to Lee Ausen.

Mr. GIUFFRA. Did Mr. Ausen report to you?

Mr. IORIO. Yes.

Mr. GIUFFRA. But Ms. Lewis was someone who was subordinate to you?

Mr. IORIO. Yes.

Mr. GIUFFRA. You supervised Ms. Lewis' activities at the RTC?

Mr. IORIO. Indirectly, yes.

Mr. GIUFFRA. Now, at your deposition I believe you testified that Ms. Lewis was a, quote, "very competent investigator," closed quote. Do you recall that?

Mr. IORIO. Yes, I do.

Mr. GIUFFRA. Why do you believe that Ms. Lewis was a very competent investigator?

Mr. IORIO. Based entirely on the quality of the work product that she produced. It was very complete, very accurate, very well detailed. Just good work.

Mr. GIUFFRA. Am I correct that Ms. Lewis did not seek out the Madison investigation?

Mr. IORIO. That's correct.

Mr. GIUFFRA. She was assigned to that investigation?

Mr. IORIO. Yes.

Mr. GIUFFRA. Now, at your deposition you testified that Ms. Lewis did a, quote, "very good job," closed quote, on the Madison investigation. Do you recall that testimony?

Mr. IORIO. Yes.

Mr. GIUFFRA. Why do you believe that Ms. Lewis did a very good job on the Madison investigation?

Mr. IORIO. It's a continuation of what I said earlier. If you've looked at the referrals you can see that they're complete, they're thorough, they're well written, they're articulate, the exhibits are there. It's just a complete package.

Mr. GIUFFRA. Am I correct that Ms. Lewis received several achievement awards as a result of her work on the Madison investigation?

Mr. IORIO. Yes, she did.

Mr. GIUFFRA. Did you play any role in the award process?

Mr. IORIO. They're recommended to me by her supervisor, and I am the initial sign off point, and then I send them on up the administrative ladder.

Mr. GIUFFRA. You recommended the awards on two occasions——

Mr. IORIO. Yes.

Mr. GIUFFRA. —for Ms. Lewis? Who, then, approved the awarding of these awards to Ms. Lewis above you?

Mr. IORIO. At that point in time we were still reporting on the credit side, so it would have been to Dennis Cavinaw's office.

Mr. GIUFFRA. Where was he located?

Mr. IORIO. He was in Kansas City also, in the same vicinity we were, but in a different building.

Mr. GIUFFRA. If we could put up on the Elmo a document bearing Bates number RI 0109. Mr. Iorio, this is a memorandum to you from Gary Davidson, who was an investigator in the Civil Fraud Unit, and it's dated February 18, 1994. If you would, just tell the Committee the circumstances under which this memorandum was prepared.

Mr. IORIO. Gary came to me and told me about the phone conversation that he had had.

Mr. GIUFFRA. That conversation was with Ms. April Breslaw?

Mr. IORIO. Yes.

Mr. GIUFFRA. Who was Ms. Breslaw?

Mr. IORIO. Ms. Breslaw was the assigned PLS attorney out of Washington, DC that had the responsibility for the civil claims out of Madison, the failed Madison institution.

Mr. GIUFFRA. You had asked Mr. Davidson to conduct a preliminary investigation into those civil claims?

Mr. IORIO. Civil fraud claims.

Mr. GIUFFRA. Civil fraud claims.

Mr. IORIO. Yes.

Mr. GIUFFRA. Mr. Davidson advised you that he had had a conversation by telephone on July 13 or 14, 1994 with Ms. Breslaw?

Mr. IORIO. January 13 or 14, 1994.

Mr. GIUFFRA. Excuse me, January 13 or 14, 1994. What did Mr. Davidson tell you about the conversation that he had had with Ms. Breslaw?

Mr. IORIO. I think he was surprised by the responses she gave him. He was just doing his job, trying to do the normal routine that you do on conducting a civil fraud investigation, and was basically surprised at the way she reacted to him.

Mr. GIUFFRA. How did Ms. Breslaw react to Mr. Davidson?

Mr. IORIO. It was more or less indicated to him that he should not proceed with the investigation, that this shouldn't be done.

Mr. GIUFFRA. If you would, read the sentence in the second full paragraph of this memorandum.

Mr. IORIO. OK.

Mr. GIUFFRA. The sentence beginning with "April felt."

Mr. IORIO. "April felt I should know there are some RTC people in management positions that would take a dim view of me investigating Madison Guaranty. She also advised I should be very careful of who I talk to and what I say because of the people associated with Madison Guaranty."

Mr. GIUFFRA. Now, you instructed Mr. Davidson to document this conversation with Ms. Breslaw?

Mr. IORIO. Yes.

Mr. GIUFFRA. Why did you think it needed to be documented?

Mr. IORIO. Because I thought it was very unusual.

Mr. GIUFFRA. Why did you believe the conversation was very unusual?

Mr. IORIO. Generally, he was doing what he was supposed to do. He was going through his contact list to see if anyone had any information. For someone to say you really shouldn't be doing this, that's not the usual circumstances that we're associated with.

Mr. GIUFFRA. Did Mr. Davidson indicate to you that he interpreted Ms. Breslaw's statement to him as a threat?

Mr. IORIO. I don't know. I don't remember. It was different than other comments he had had doing similar types of work, and I don't think he really knew quite what to expect.

Mr. GIUFFRA. Was he very concerned after speaking to Ms. Breslaw?

Mr. IORIO. He was upset, yes.

Mr. GIUFFRA. Now, this conversation happened sometime around January 13 or 14, 1994, then, on February 2nd, which was approximately 2 weeks later, you brought Ms. Breslaw to meet Ms. Lewis; is that correct?

Mr. IORIO. No. Ms. Breslaw went to Ms. Lewis' office on her own. I didn't take her there.

Mr. GIUFFRA. But it was 2 weeks after this conversation that Ms. Breslaw had had with Mr. Davidson?

Mr. IORIO. Yes.

Mr. GIUFFRA. Now, Ms. Lewis, I have several questions for you about the tape recording. When you first met with Ms. Breslaw, were you aware of the fact that she had been involved in selecting the Rose Law Firm to handle certain civil claims on behalf of the RTC?

Ms. LEWIS. Yes, sir, I believe I was.

Mr. GIUFFRA. Did she advise you of that fact?

Ms. LEWIS. No, I don't think it came up during the conversation.

Mr. GIUFFRA. Did she advise you that she had had a prior relationship with Associate Attorney General Webster Hubbell?

Ms. LEWIS. No, I think, Mr. Giuffra, the extent of my knowledge was just that she'd been involved in the selection of the Rose Law Firm at the beginning.

Mr. GIUFFRA. Now, am I correct that when Ms. Breslaw indicated to you that, quote, "the head people would like to be able to say that Whitewater did not cause a loss to Madison," closed quote, that you interpreted that as though she wanted to give you a message?

Ms. LEWIS. That is the way I interpreted it, yes, sir.

Mr. GIUFFRA. What sort of message did you believe Ms. Breslaw wanted to communicate to you?

Ms. LEWIS. The immediacy of Ms. Breslaw's concerns when she walked into my office saying "under normal circumstances" and then going on to state that the people at the top kept getting asked and asked and asked, pretty clearly conveyed to me that she was concerned about what the people at the top were being put through and that they would like to be able to answer this in a manner that would, as she later said, get them off the hook.

Mr. GIUFFRA. We just heard the tape recording, and at the beginning of the tape we heard a series of notes that you dictated. Do you recall that?

Ms. LEWIS. Yes, I do.

Mr. GIUFFRA. Was that your normal practice, to use this tape recorder to dictate notes to yourself?

Ms. LEWIS. Yes, when it worked.

Mr. GIUFFRA. We heard a pause near the beginning of the tape, right before the Breslaw conversation. Do you recall that pause?

Ms. LEWIS. Yes.

Mr. GIUFFRA. Now, I believe at your deposition you testified that you thought you had turned the machine off and then it popped back on again?

Ms. LEWIS. That is what I testified, Mr. Giuffra. That machine was 8 years old at the time, and it——

Mr. GIUFFRA. Go ahead.

Ms. LEWIS. Thank you. It had a history of not working some days, working other days. On that particular day, because of a project that I had due to Mr. Iorio, my desk was very full of files and other paraphernalia and although the recorder was laying where it usually was, by my calculator, I was shuffling a lot around and I suspect I may have knocked it and in so doing may have turned it on, but I was not aware it was on when the conversation initiated. I later became aware it was on and consciously chose to let it run.

Mr. GIUFFRA. Do you think the long pause was because the machine went back on?

Ms. LEWIS. I think I must have knocked it around and it came back on. I remember at one point leaving my office and as I was returning, I saw Ms. Breslaw coming down the hall toward my office and literally walked in the door with her, and as we walked in I said to her "come in, come in."

Mr. GIUFFRA. You just testified that you made a conscious decision to leave the recorder on. Why did you do that?

Ms. LEWIS. I did not like the tone and the inferences that Ms. Breslaw was making, even in her opening statement, that these were not normal circumstances and that she was very concerned about the people at the top and the fact that they were constantly being asked about Whitewater.

Mr. GIUFFRA. Your reaction was the same as the reaction of Mr. Davidson 2 weeks previously to a conversation with Ms. Breslaw?

Ms. LEWIS. Surprise and discomfort, yes, sir.

Mr. GIUFFRA. Now, Mr. Iorio, you have some familiarity with this now-infamous tape recorder; is that correct?

Mr. IORIO. Yes, I have seen the tape recorder.

Mr. GIUFFRA. Are you aware of the fact that Ms. Lewis' tape recorder would sometimes go on and off?

Mr. IORIO. I have been recorded by her tape recorder, yes.

Mr. GIUFFRA. Accidentally?

Mr. IORIO. Yes.

Mr. GIUFFRA. Mr. Iorio, do you share Ms. Lewis' view that there was an effort to hamper or impede the RTC's investigation into Madison by people either in the Washington office of the RTC or the U.S. Attorney's Office?

Mr. IORIO. They made it very difficult for us to do our work, yes.

Mr. GIUFFRA. Who do you think made it difficult for you to do your work?

Mr. IORIO. I think, generally, I would have to say the PLS as a unit, and that could be Washington and Kansas City.

Mr. GIUFFRA. How did the PLS as a unit make it difficult for you to do your work?

Mr. IORIO. In addition to the critique of the referrals, which was something new and different, we had the situation whereby the FBI in Little Rock was unhappy because they couldn't get their subpoena request complied with. Then they wanted Jean Lewis taken off of the institution. Just a number—if you look at each of those situations individually, they probably aren't that important, but then if you look at all of these things together, it colors a pretty thorough picture.

Mr. GIUFFRA. Mr. Iorio, what is the PLS, just for the record?

Mr. IORIO. PLS stands for Professional Liability Section. That is a group of litigation attorneys who specialize in bringing suits against directors, officers, attorneys, and accountants primarily on negligence theories with regard to their activities that lead to the demise of the institution in which they worked.

Mr. GIUFFRA. Why was this PLS review of the criminal referrals in connection with Madison so unusual?

Mr. IORIO. We had never had this occur before. That made it unusual. I think the second thing that made it unusual, from the standpoint of the Kansas City office being involved, is that particular institution had never been assigned to the Kansas City PLS; it had always been assigned to April Breslaw, who was in Washington, DC, a Washington PLS attorney. So the Kansas City PLS being involved, that had never happened before.

Mr. GIUFFRA. Now, Mr. Iorio, what is, in your experience, the normal time period for a U.S. Attorney's Office to act on an RTC criminal referral?

Mr. IORIO. I would say somewhere around 60 days.

Mr. GIUFFRA. Ms. Lewis, what's your experience with regard to the time in which a U.S. Attorney's Office normally acts on an RTC criminal referral?

Ms. LEWIS. I generally received responses back within 30 to 45 days.

Mr. GIUFFRA. How long did it take the U.S. Attorney's Office in Little Rock to act on your criminal referral C0004?

Ms. LEWIS. Roughly 90 days after I submitted it. There had been no response forthcoming, so I contacted Mr. Irons at the FBI in Little Rock to find out what was going on.

Mr. GIUFFRA. That began the long odyssey that you talked about in your opening statement of trying to get some sort of response from the Justice Department; correct?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. The U.S. Attorney's Office only declined the referral on October 27, 1993, which was approximately 14 months after you had submitted it?

Ms. LEWIS. That's correct.

Mr. GIUFFRA. Were you surprised when this referral was declined?

Ms. LEWIS. Yes, I was.

Mr. GIUFFRA. Why were you surprised when the referral was declined?

Ms. LEWIS. If the U.S. Attorney's Office had had a basis for declination, I initially thought that it would have come from Mr. Banks in the beginning when he was still the U.S. Attorney. I didn't understand why it took 14 months to finally come up with a declination, and as documented and as thorough as the referral was, I was surprised that they had declined it when there seemed to be no attempt to make a review of it and the merits of it before it was declined.

Mr. GIUFFRA. Mr. Iorio, do you have any explanation for this delay of 14 months with regard to this referral?

Mr. IORIO. I think some of the delay occurred because we had change in administration. We had new U.S. Attorneys coming in and old U.S. Attorneys going out.

Mr. GIUFFRA. Did that happen with regard to other criminal referrals that were submitted by the Kansas City office?

Mr. IORIO. Yeah, they were delayed somewhat, yes.

Mr. GIUFFRA. But 14 months?

Mr. IORIO. Fourteen months I think is a little long.

Mr. GIUFFRA. Would you say a little long or highly unusual?

Mr. IORIO. Highly unusual.

Mr. GIUFFRA. Now, we heard testimony this morning about the administrative leave issue. You were both placed on administrative leave, I believe, on August 15, 1994; is that right?

Mr. IORIO. Correct.

Mr. GIUFFRA. Mr. Iorio, were you ever given an explanation for why you were placed on administrative leave?

Mr. IORIO. Never.

Mr. GIUFFRA. As you sit here today, have you ever received an explanation for why you were placed on administrative leave?

Mr. IORIO. Not officially, no.

Mr. GIUFFRA. Unofficially?

Mr. IORIO. Unofficially I've been given a document that purports to tell me why I was placed on administrative leave.

Mr. GIUFFRA. Now, when did you first see that document?

Mr. IORIO. Oh, about 45 minutes ago.

Mr. GIUFFRA. That's a——

The CHAIRMAN. Forty-five minutes ago?

Mr. IORIO. Yes.

Mr. GIUFFRA. That's a memorandum from Tom Hindes, who is an Associate General Counsel of the PLS, to John Adair, who is the Inspector General of the RTC?

Mr. IORIO. Yes.

Mr. GIUFFRA. That's dated September 22, 1994?

Mr. IORIO. Correct.

Mr. GIUFFRA. That's a 12-page memorandum?

Mr. IORIO. Yes.

Mr. GIUFFRA. You've never seen this memorandum before in your entire life?

Mr. IORIO. Never.

Mr. GIUFFRA. Until 45 minutes ago when this Committee made it available to you?

Mr. IORIO. Yes.

Mr. GIUFFRA. Ms. Lewis, have you ever seen this memorandum before?

Ms. LEWIS. Not until about 10 minutes ago.

Mr. GIUFFRA. You've never been given any other explanation in writing by the RTC about why you were placed on administrative leave?

Ms. LEWIS. No, Mr. Giuffra, I have not.

Mr. GIUFFRA. Now, you were finally allowed to return to work; is that right, Mr. Iorio?

Mr. IORIO. That's correct.

Mr. GIUFFRA. Ms. Lewis, you were allowed to return to work also?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Mr. Iorio, why were you allowed to return to work?

Mr. IORIO. I don't know. They just said come back to work. They said go away and they said come back, so I just did what I was told.

Mr. GIUFFRA. Ms. Lewis, while you were out on administrative leave, are you aware of any entries that were made into your office during that time?

Ms. LEWIS. During that timeframe? When I came back, a comment had been made by a fellow employee that he believed there had been people in our offices while we were gone, but I have no absolute proof of that, Mr. Giuffra.

Mr. GIUFFRA. Now, Mr. Iorio, did you ever advise Ms. Lewis that she was spending too much time on the Madison investigation?

Mr. IORIO. No.

Mr. GIUFFRA. Ms. Lewis, did any of your supervisors ever advise you that you were spending too much time on the Madison investigation?

Ms. LEWIS. No, sir.

Mr. GIUFFRA. Ms. Lewis, was it up to you to determine how to allocate RTC resources?

Ms. LEWIS. No, sir, that was not my decision.

Mr. GIUFFRA. You worked on the matters that were assigned to you; correct?

Ms. LEWIS. That's correct.

Mr. GIUFFRA. Now, Mr. Iorio, is that the normal practice at the RTC, an investigator such as Ms. Lewis would be told what she would work on by someone such as yourself who was her supervisor?

Mr. IORIO. Yes, myself or Mr. Ausen. If there is some overriding reason that we don't know about and the investigator would bring it to our attention we would factor that into our decision, but usually the investigator doesn't make the decision on what institutions they work on.

Mr. GIUFFRA. So the question of whether Ms. Lewis should have been working on S&L A as opposed to S&L B was not a decision for Ms. Lewis to make?

Mr. IORIO. No, that's correct.

Mr. GIUFFRA. In fact, it might have been improper for Ms. Lewis to make that sort of decision with regard to the prioritization with regard to the use of RTC resources?

Mr. IORIO. Possibly, yes.

Mr. GIUFFRA. Now, Mr. Iorio, there were 10 referrals that Ms. Lewis prepared with regard to Madison. Did you review each of those referrals?

Mr. IORIO. Yes, I did.

Mr. GIUFFRA. Did Mr. Ausen review each of those referrals?

Mr. IORIO. Yes, he did.

Mr. GIUFFRA. Did you, in fact, sign each of those referrals, the both of you, Mr. Ausen and yourself?

Mr. IORIO. Yes, we did.

Mr. GIUFFRA. Did you believe that those referrals were properly prepared?

Mr. IORIO. Yes.

Mr. GIUFFRA. That they met the basic standard for an RTC criminal referral?

Mr. IORIO. They met the DOJ prescribed standard, yes.

Mr. GIUFFRA. In fact, you believed they exceeded the standard?

Mr. IORIO. They were better than the standard, yes.

Mr. GIUFFRA. Did anyone else at the RTC examine Ms. Lewis' referrals?

Mr. IORIO. Yes.

Mr. GIUFFRA. Did someone named Mr. Carl Gamble examine her referral C0004?

Mr. IORIO. Mr. Carl Gamble and Mr. Jim Dudine both looked at those referrals.

Mr. GIUFFRA. Who was Mr. Gamble?

Mr. IORIO. Mr. Gamble, in the administrative hierarchy within the PLS, was the ultimate criminal coordinator in Washington. I'm not sure of his precise title.

Mr. GIUFFRA. He was the top person, though?

Mr. IORIO. With regard to criminal functions, yes.

Mr. GIUFFRA. What did he say about Ms. Lewis' referral C0004?

Mr. IORIO. To the best of my recollection, he thought that it met the standard and that the referral should go forward.

Mr. GIUFFRA. In fact, he indicated to you that he thought it exceeded the standard?

Mr. IORIO. I don't remember.

Mr. GIUFFRA. If we could put on the Elmo the document that we prepared for criminal referral C0004. This has been prepared by the Committee staff and it was—that's the wrong document.

Ms. Lewis, if you could, in your own words, just describe the substance of criminal referral C0004. Use this chart to explain how Whitewater Development Corporation fit in.

Ms. LEWIS. Yes, sir. The referral focused on Mr. McDougal's attempts to basically fabricate funds by using several entities that he controlled, most of which are listed right here on your chart. They included Flowerwood, Madison Financial, Madison Marketing, his personal account, Pembrook Manor, Rolling Manor, Tucker-Smith and Whitewater.

Mr. McDougal had an elaborate method through which he would write checks or his wife Susan would write checks or their associate, Ms. Anspaugh, would write checks and deposit them into the various accounts when, in fact, there was no balance to sustain the check that had just been written. This was done to perpetuate the appearance of legitimate balances. At the time, there appeared to be a legitimate balance in the account, and the check would be written going out to another financial institution, in some cases to make a mortgage payment or to pay for accounting services or even to make transfers to, for one example, the Whitewater account at another financial institution.

Mr. GIUFFRA. Now, with regard to the Whitewater account, funds were deposited into that account from Flowerwood Farms; am I correct?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Also, from Madison Financial, Madison Marketing, Mr. McDougal's own account, Pembrook Manor, Rolling Manor and then Tucker-Smith-McDougal; is that all correct?

Ms. LEWIS. I believe that's correct.

Mr. GIUFFRA. The money would go into the Whitewater account and then checks were written to the Bank of Cherry Valley; is that right?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Then Jim McDougal, Ozark Realty, Security Bank of Paragould, Tucker-Smith-McDougal and, also, Chris Wade?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Now, what did that indicate to you, the fact that there was money going into the account and then going out of the account to all these different entities?

Ms. LEWIS. Mr. McDougal had a very active real estate career; that's what it indicated to me. He and his various business associ-

ates were involved in ventures that were requiring some monthly payments and this is the method that he chose to make some of those monthly payments.

Mr. GIUFFRA. Some of those payments were not made having anything to do with Whitewater Development Corporation?

Ms. LEWIS. No, sir, I believe that's correct.

Mr. GIUFFRA. Now, with regard to the Security Bank of Paragould, do you recall seeing a check in the amount of $7,322?

Ms. LEWIS. Yes, sir, I believe I do.

Mr. GIUFFRA. Are you aware that this check was used to pay $2,322 in interest and $5,000 in principal on a personal loan taken out by Governor Clinton?

Ms. LEWIS. Mr. Giuffra, I remember the check and I believe I remember actually seeing that breakdown in the memo filed on the check, but I don't recall whether I knew at the time that it was specifically for a loan to Governor Clinton.

Mr. GIUFFRA. But you now know that it was for a loan to Governor Clinton?

Ms. LEWIS. Yes, sir, I believe I've subsequently learned that.

Mr. GIUFFRA. You are also now aware that Governor Clinton had borrowed $20,800 from the Security Bank to pay off the balance on a $3,000 loan that Mrs. Clinton had borrowed from Madison Bank & Trust to pay for a model home on lot 13 in Whitewater?

Ms. LEWIS. That is my understanding, yes, sir.

Mr. GIUFFRA. So some of the money that the McDougal entities put through Whitewater Development Corporation was used to pay a personal loan of the Clintons; is that right?

Ms. LEWIS. Yes, sir, it would appear so.

Mr. GIUFFRA. If we could put up the chart that was originally put up on the screen indicating the overdrafts.

Now, with regard to the Whitewater account, am I correct that between February and April, which are the checks listed here—you actually did the sample for a longer period; isn't that right? It was from December to May?

Ms. LEWIS. Yes, sir, that's correct. Actually, I did a database on that referral that spanned about a 2½-year timeframe, but in the interests of time constraints I limited this to a 6-month period.

Mr. GIUFFRA. You identified five checks totaling $60,625 that were written on the Whitewater account that were written on insufficient funds; is that right?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Ms. Lewis, criminal referral C0004 lists the Clintons as witnesses; is that right?

Ms. LEWIS. Yes.

Mr. GIUFFRA. Why were Governor and Mrs. Clinton listed as witnesses in connection with this referral?

Ms. LEWIS. Then-Governor and Mrs. Clinton were business associates and involved in the Whitewater Development Corporation with Mr. McDougal and, as such, I think I would have been imprudent in my job had I not listed them as witnesses because they were part of Whitewater and could have easily had knowledge of what Mr. McDougal was doing with those funds.

Mr. GIUFFRA. You had a reasonable expectation that they would know how their money was being spent?

Ms. LEWIS. Yes, I did.

Mr. GIUFFRA. Am I also correct that Jim Guy Tucker was named as a witness in connection with criminal referral C0004?

Ms. LEWIS. I would have to look, Mr. Giuffra, but I believe that's correct.

Mr. GIUFFRA. Also Stephen Smith?

Ms. LEWIS. Yes, I believe so.

Mr. GIUFFRA. Am I right that the Independent Counsel has indicted Mr. Tucker now?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. That Smith has entered into a plea agreement?

Ms. LEWIS. That's correct.

Mr. GIUFFRA. So sometimes a witness, after further investigation by the Justice Department, can become a target of an investigation; isn't that right?

Ms. LEWIS. Yes, sir, that's correct.

Mr. GIUFFRA. Mr. Iorio, is that something that's happened in your experience, someone who is initially listed as a witness in a RTC criminal referral may ultimately become the target of the investigation?

Mr. IORIO. Yes. I think that's largely because they have subpoena powers and other powers that we don't have and they can pursue the matter further. So that's not uncommon.

Mr. GIUFFRA. So that's a fairly standard thing, that someone who is a witness ultimately would become the subject of an investigation?

Mr. IORIO. Yes.

Mr. GIUFFRA. Now, Ms. Lewis, in criminal referral C0004 you indicated that the Clintons stood to benefit from what you believed to be criminal activity at Madison. Do you recall that?

Ms. LEWIS. Yes, I do.

Mr. GIUFFRA. How did you believe that the Clintons stood to benefit from criminal activity at Madison?

Ms. LEWIS. It's fairly clear at this point that Mr. McDougal's actions at Madison were in large part criminal, including, in my view, these check kiting activities, and because these funds came through kited checks and were used to the benefit of Whitewater Development for paying its accountants, for making loans to itself, for making Whitewater mortgage payments, the benefit that inured to Whitewater ultimately inured to the people who were involved in that corporation, which included Mr. and Mrs. Clinton and Mr. and Mrs. McDougal.

Mr. GIUFFRA. Mr. Iorio, do you agree with Ms. Lewis having listed the Clintons, first of all, as witnesses with regard to this referral?

Mr. IORIO. Yes.

Mr. GIUFFRA. You think that was a prudent judgment given the information you had available to you?

Mr. IORIO. Yes, I do.

Mr. GIUFFRA. Do you agree with the fact that in this referral Ms. Lewis indicated that the Clintons stood to benefit from suspected criminal activity at Madison?

Mr. IORIO. Yes.

Mr. GIUFFRA. Why do you believe that that was a correct statement by Ms. Lewis?

Mr. IORIO. It was factual.

Mr. GIUFFRA. Ms. Lewis, why do you believe that Whitewater contributed to the loss, ultimately, that was suffered by Madison?

Mr. IORIO. I think, Mr. Giuffra, as I have previously testified, that if someone were to take the time and literally reconstruct a cash flow through every one of the accounts under Mr. McDougal's control that were utilized for this particular activity, they would determine that there were numerous unauthorized loans there and through those unauthorized loans, subsequently, losses.

The losses based on each individual account would have to be determined, but when all added up in the aggregate there would have been a tremendous amount of loss to the institution. Looking at the aggregate loss to the institution you could factor in, then, how much each one of these various accounts had contributed to that loss.

Mr. GIUFFRA. So ultimately, for example, with regard to these overdrafts, would that have been a loss that was ultimately suffered by Madison, the $60,000 in overdrafts?

Ms. LEWIS. Yes, sir, I believe in the long run it could well have been.

Mr. GIUFFRA. Ultimately, the cost of these overdrafts would have been borne by the American taxpayer?

Ms. LEWIS. The cost of the losses to Madison has been borne by the taxpayer.

Mr. GIUFFRA. Including some costs, though, relating to transactions in the Whitewater account?

Ms. LEWIS. In my estimation, yes, sir.

Mr. GIUFFRA. If we could just put up the next referral, which is 196.

Ms. Lewis, if you would, just briefly describe this particular criminal referral, 196.

Ms. LEWIS. Yes, sir. The basic allegation was that a loan that was made to a Madison borrower, Mr. Charles Peacock, III, for $50,000 had, in fact, been—some of the funds out of that loan had been misappropriated for use as contributions to Mr. Clinton's then-gubernatorial campaign.

Mr. GIUFFRA. That would be the $6,000 that was on two checks that Mr. Peacock had issued, these were cashier's checks, in Mr. Clinton's name?

Ms. LEWIS. Yes, sir, that's correct. I subsequently have learned through Mr. Peacock's own admission that he did, in fact, purchase those two cashier's checks but did not put his name down as a remitter, on one he put his son and on another he put his late business associate.

Mr. GIUFFRA. Did you subsequently learn during the course of your investigation that McDougal had also on the same day—this would be April 4, 1985—written a $3,000 check to the Bill Clinton Political Committee and there was also another check written on the Flowerwood Farms account in the name of Mr. Fulbright all on the same day?

Ms. LEWIS. Yes, sir, those transactions did occur on the same day, but I would like to clarify one point, Mr. Giuffra. With regard

to Flowerwood, there was a $3,000 check written by Flowerwood to Madison Guaranty. It is my belief and my allegation that that subsequently became the check with Mr. Fulbright's name on it simply because all of the checks listed on your exhibit were sequential in nature, including the one from Mr. Fulbright.

Mr. GIUFFRA. We now know that on April 4, 1985, Mr. McDougal had a fundraiser for then-Governor Clinton. You're aware of that now; am I correct?

Ms. LEWIS. Yes, sir, I am now aware of that.

Mr. GIUFFRA. At the time you were conducting the investigation you had some suspicion that Mr. McDougal had orchestrated these contributions to then-Governor Clinton's campaign; is that right?

Ms. LEWIS. Yes, sir.

Mr. GIUFFRA. Now, Mr. Peacock ultimately defaulted on this $50,000 loan; is that right?

Ms. LEWIS. Yes, he did.

Mr. GIUFFRA. Was the cost of this default ultimately borne by the U.S. taxpayer?

Ms. LEWIS. Yes, sir, as I recall, $48,500 of it was. One thousand five hundred dollars was offset by the sale of collateral. That $1,500 worth of collateral had been constituted up front as being a quarter of a million dollars worth of air conditioning equipment.

Mr. GIUFFRA. So ultimately the American taxpayer bore the cost of these contributions, at least the $6,000 to the Clinton campaign?

Ms. LEWIS. Yes, sir, I believe so.

Mr. GIUFFRA. Now, in this referral you list Hillary Clinton as a witness. Why did you do that?

Ms. LEWIS. I believed that there was a possibility that Mrs. Clinton may have had knowledge or come to have knowledge of the source of these funds.

Mr. GIUFFRA. Why did you believe that Mrs. Clinton may have had knowledge of the source of these funds?

Ms. LEWIS. The timeframe in which this fundraiser occurred was the same timeframe in which Mrs. Clinton was actively representing Madison Guaranty before the State Securities Commissioner in an effort to recapitalize the institution because it was having solvency problems.

Mr. GIUFFRA. Did you also believe there might be a connection between this loan and the selection of the State Securities Commissioner, Ms. Beverly Bassett-Schaffer?

Ms. LEWIS. I recommended in the referral that the U.S. Attorney review the possibility that it could be a possible quid pro quo arrangement, yes, sir.

Mr. GIUFFRA. You listed Ms. Schaffer as a witness in connection with this referral?

Ms. LEWIS. I believe I did, Mr. Giuffra.

Mr. GIUFFRA. Just one more question. This is for Mr. Iorio.

Sometime after Congress had extended the statute of limitations with regard to civil claims, the RTC created a team to review whether any civil claims should be pursued in connection with Madison. Now, I believe Ms. Breslaw was placed on that team initially; is that right?

Mr. IORIO. Yes.

Mr. GIUFFRA. Did you object to Ms. Breslaw's involvement as a member of that team?

Mr. IORIO. Yes, I did.

Mr. GIUFFRA. Why did you object to Ms. Breslaw's involvement as a member of that team?

Mr. IORIO. She was the individual that made the prior decisions. If you wanted to have total objectivity, then she shouldn't be a part of the team. Her work should be reviewed independently with her providing input.

Mr. GIUFFRA. She had a vested interest in the outcome of the review?

Mr. IORIO. Yes.

Mr. GIUFFRA. She was taken off the review; is that right?

Mr. IORIO. I think later she removed herself.

Mr. GIUFFRA. I have no further questions, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good afternoon, Ms. Lewis. Good afternoon, Mr. Iorio. I'd like to ask you some questions about the priorities that are established at the RTC. In that context, let me ask whether, prior to the time you got involved in the Madison investigation, a priority list was established for the Kansas City office of the RTC for failed institutions in Arkansas?

Ms. Lewis.

Ms. LEWIS. I had a prioritized list of institutions, that's correct, Mr. Ben-Veniste, but I did that when I was still in the Tulsa office before I actually transferred to Kansas City.

Mr. BEN-VENISTE. Let me put on the Elmo a December 11, 1991 memo from you to Clark Walton. You were then known as Jean Brennan; is that correct?

Ms. LEWIS. Yes, sir, it is.

Mr. BEN-VENISTE. That was designated RI 0942?

Ms. LEWIS. Mr. Ben-Veniste, I'm sorry, I don't seem to have a copy of that document.

Mr. BEN-VENISTE. On the December 11, 1991 prioritization, Madison Bank of Little Rock is listed as 13th, I believe, in the priorities with Savers Little Rock listed second, First Federal Savings & Loan of Paragould first, and First Federal of Little Rock fourth; is that correct, Ms. Lewis?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. At the time of your deposition, you didn't seem to remember how much money was lost in the failure of Savers of Little Rock. Do you know now?

Ms. LEWIS. No, Mr. Ben-Veniste, I've not gone back to look.

Mr. BEN-VENISTE. This was the institution that was number 2 on your priority list. If I suggest to you that it was $600 million, would you accept that?

Ms. LEWIS. Yes, sir, I believe I would accept that.

Mr. BEN-VENISTE. On many occasions during 1991, 1992 and 1993, Steven Irons of the FBI continued to ask you what you were doing about the Savers Savings Bank in terms of providing a criminal referral to the FBI; isn't that so?

Ms. LEWIS. No, sir, I don't recall having several conversations with Mr. Irons with regard specifically to Savers.

Mr. BEN-VENISTE. You don't think Mr. Irons reminded you on several occasions that he would like to hear from you with respect to your investigation of Savers Savings?

Ms. LEWIS. I remember discussions with Mr. Irons, but I would not enumerate them as several.

Mr. BEN-VENISTE. Were there more than one? I don't want to quibble about it, but he was very interested, was he not, in you pursuing Savers Savings?

Ms. LEWIS. We had spoken about the timeframe in which I would pursue Savers and we agreed it would be during the first quarter of 1992, I believe, yes, sir.

Mr. BEN-VENISTE. First Federal of Little Rock involved another substantial loss. At the time of your deposition before our Committee, you didn't seem to know how much was involved. Do you know now?

Ms. LEWIS. No, sir, not the specific dollar amount, but I do believe it was larger than the losses incurred by Savers.

Mr. BEN-VENISTE. Savers loss was $600 million. Do you have any idea how much was involved in First Federal of Little Rock?

Ms. LEWIS. No, sir, I just recall that it was a larger loss on that institution.

Mr. BEN-VENISTE. At the time of your deposition, you didn't know whether it was $100 million or $150 million. Do you have any better idea now?

Ms. LEWIS. I've accepted what you said about Savers loss being $600 million as an axiom, so it's going to have to be more than $600 million. I do remember it was larger than that.

Mr. BEN-VENISTE. Would the figure $900 million, close to $1 billion in loss, ring a bell with you?

Ms. LEWIS. I will accept that, yes, sir.

Mr. BEN-VENISTE. Now, you never produced a criminal referral with respect to either Savers Savings or First Federal, did you?

Ms. LEWIS. With regard to Savers, no, I did not, Mr. Ben-Veniste. With regard to First Savings, if memory serves correctly, I believe I did produce a criminal referral late in 1991.

Mr. BEN-VENISTE. First Federal of Little Rock, if you look at number 4 on your priority list, $900 million?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. You say you produced the referral?

Ms. LEWIS. To the best of my memory, yes, sir, I did.

Mr. BEN-VENISTE. Are you confusing that with Paragould?

Ms. LEWIS. No, I don't believe so.

Mr. BEN-VENISTE. You think you did one in 1991 and yet at December 11, 1991, it's number 4 on your list?

Ms. LEWIS. That's correct, Mr. Ben-Veniste. What I remember about that referral is it was an issue that was brought to my attention by Mr. Walton. It dealt with an individual by the name of George Mah and a restaurant in Houston through Savers. I believe that referral was ultimately turned over to the District Attorney for prosecution.

Mr. BEN-VENISTE. Did you tell Special Agent Irons that you had given up an opportunity in Washington, DC, a job opportunity, just to be able to work on the Madison matter?

Ms. LEWIS. No, sir, I don't recall saying that to Mr. Irons.

Mr. BEN-VENISTE. Did you tell Special Agent Irons that, in order to work on the Madison referral, you not only gave up a job opportunity, but in order to work on it, you thought you or it, the Madison referral, could alter history? Do you recall telling him that?

Ms. LEWIS. No, sir. You raised that question in my deposition, and I've thought about it significantly since then, and I do not recall saying that.

Mr. BEN-VENISTE. Let me show you Exhibit OIC 1124. Put that up on the Elmo, please. Just north of the equator on Agent Irons' handwritten notes, it says "JL called"—Jean Lewis, you were then known as Jean Lewis, were you not?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. "Just about ready. She has a deadline of 8/31," August 31, 1992. "Gave up a job opportunity in DC just to do referral. She or it could alter history. Very dramatic."

These are the contemporaneous notes of Special Agent Steven Irons, who will be here to testify this week and who has testified under oath before this Committee in deposition.

Does that help refresh your recollection that in August 1992, you called Mr. Irons and you told him that you gave up a job in Washington just to work on the Madison referral, and you thought that you or it could alter the course of history?

Ms. LEWIS. Mr. Ben-Veniste, Mr. Irons' contemporaneous notes are not something I'm going to argue with because I have known Mr. Irons and worked with him extensively. As to turning down a job in Washington, I was offered one position in Washington, and during the deposition when you raised that question, I told you that that issue had been withdrawn. I was also offered, and I later remembered, another position in Washington through Ms. Doris Garrett on the contracting side, and I did turn that job down, sir. I do remember that.

Mr. BEN-VENISTE. So you accept Agent Irons' notes, then, if I understand your testimony, of his conversation with you?

Ms. LEWIS. I will accept Agent Irons' notes, but if I made that comment, then knowing my sense of humor, it was probably made in much more of a sarcastic tone than a dramatic tone.

Mr. BEN-VENISTE. That you turned down the job offer and thought you might alter the course of history was a joke to you?

Ms. LEWIS. No, I don't believe I said that was a joke. I believe I said that my tone can sometimes become sarcastic, and if I made that comment, it was probably more in that vein than of drama.

Mr. BEN-VENISTE. Who gave you a deadline of August 31, 1992, to finish the criminal referral on Madison?

Ms. LEWIS. That was a self-imposed deadline because I had begun the drafting process, had planned to leave for a vacation in mid-August to attend my 20th high school reunion, and hoped to have it completed shortly after I returned.

Mr. BEN-VENISTE. Did you tell Agent Irons that your bosses had imposed that deadline on you?

Ms. LEWIS. No, sir, I don't believe I ever told him they had imposed a deadline.

Mr. BEN-VENISTE. Now, with respect to any self-imposed or other deadline imposed—and we'll get Agent Irons' testimony on this

later this week—it is true, is it not, that there was no particular reason for urgency in connection with the Madison referral?

Ms. LEWIS. That's true, there was no particular urgency.

Mr. BEN-VENISTE. Indeed, Mr. McDougal had already been prosecuted and had been acquitted, and he was the principal target of your referral; correct?

Ms. LEWIS. That's correct.

Mr. BEN-VENISTE. Mr. McDougal at the time that you were working on this referral, you learned, was impecunious; correct? He had no money?

The CHAIRMAN. I'm glad you explained that one.

Ms. LEWIS. Thank you, Mr. Chairman.

The CHAIRMAN. Any time.

Ms. LEWIS. My knowledge of his financial circumstances were such that he had no money, that's correct.

Mr. BEN-VENISTE. He had no ability, as far as you know, to repay anything in connection with the losses associated with Madison?

Ms. LEWIS. Correct.

Mr. BEN-VENISTE. He was living, you knew, in a borrowed mobile home; correct?

Ms. LEWIS. I had read that in an article, yes, sir.

Mr. BEN-VENISTE. You knew that he had been in poor health, had been hospitalized for a mental breakdown?

Ms. LEWIS. I knew he had health problems, yes, sir.

Mr. BEN-VENISTE. His wife had left him, you knew that?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. You saw no reason for haste because you were worried about Mr. McDougal fleeing the country or some such thing?

Ms. LEWIS. Mr. Ben-Veniste, when I undertake an investigation of this nature, I don't usually get to the asset search portion of it until very late, and don't make judgments as far as possible restitution. It's based solely on the level of criminality, and the level of criminality that we found at Madison constituted referrals, so I wrote them as part of my job.

Mr. BEN-VENISTE. At the same time you were spending all this time on Madison in 1992, trying to get it done by your self-imposed deadline of August 31, the FBI, Agent Irons and Special Agent in charge of the Little Rock office Pettus were telling you that they were vitally interested in receiving referrals on Savers and First Federal; isn't that so?

Ms. LEWIS. I believe I've testified I remember having conversations with Mr. Irons, but I don't recall him imparting to me any expediency or vital importance to those referrals.

Mr. BEN-VENISTE. Now, you recognized, did you not, at the time you were working on the Madison referral that any publicity about then-Governor Clinton, then-candidate Clinton being involved in an FBI or Grand Jury investigation, even as a witness, could have negatively affected his chances in the general election for the Presidency of the United States?

Ms. LEWIS. I accept that was a possibility, yes, sir.

Mr. BEN-VENISTE. Have you ever heard the expression "an October surprise"?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. In this context, did you not believe that had there been a revelation that then-Governor Clinton was involved in some ongoing criminal investigation, albeit as a witness, that might, in fact, constitute such an October surprise affecting the general election?

Ms. LEWIS. I have two comments to that, Mr. Ben-Veniste. First, that's asking me to speculate; and second, because that referral was never revealed, there was no impact.

Mr. BEN-VENISTE. We'll get to the circumstances about the revelation or nonrevelation of that investigation in a moment. Did you accept the possibility that the revelation of the information could indeed have a negative effect on Mr. Clinton's chances?

Ms. LEWIS. I'll acknowledge that was a possibility, yes, sir.

Mr. BEN-VENISTE. Now, a little while ago, Mr. Iorio, you testified that the normal follow-up time for a criminal referral being acted upon by the U.S. Attorney's Office or the FBI was about 60 days, unless I misheard you.

Mr. IORIO. No, that's correct.

Mr. BEN-VENISTE. In fact, your testimony under oath before our Committee was that you wouldn't even expect to hear back from a U.S. Attorney's Office or the FBI for a 90-day period. Do you recall that?

Mr. IORIO. No, not really.

Mr. BEN-VENISTE. You've had the opportunity to review your transcript, have you not?

The CHAIRMAN. Mr. Ben-Veniste, if I might, I believe, and I'll ask the reporter to go back and check, but I believe he said approximately 90 days.

Mr. BEN-VENISTE. Was that what you meant to say? You said 60, but did you mean to say 90?

Mr. IORIO. Either one, 60 or 90.

Mr. BEN-VENISTE. Either one?

Mr. IORIO. Yes.

Mr. BEN-VENISTE. So did you have any reason to believe that the U.S. Attorney or the FBI would act in connection with the Madison referral, which Ms. Lewis had submitted on August 31st, sooner than 90 days?

Mr. IORIO. No.

Mr. BEN-VENISTE. There was no reason to follow up and to check, was there, as to what the U.S. Attorney's Office or the FBI might be doing?

Mr. IORIO. I didn't follow up. I didn't check.

Mr. BEN-VENISTE. You, I take it, did not direct that Ms. Lewis take such action?

Mr. IORIO. She talks with those people on a daily basis, so conversations could have occurred——

Mr. BEN-VENISTE. That wasn't my question. My question is whether you directed Ms. Lewis——

Mr. IORIO. To check, no, I did not.

Mr. BEN-VENISTE. Can we put up Exhibit OIC 1135. Let me ask you, Ms. Lewis, did you ever tell Agent Irons that—let me ask the question.

Did you ever ask Agent Irons whether, in fact, he could provide you with a status report on what he was doing or what his views were on the criminal referral?

Senator SARBANES. Ms. Lewis, why don't you defer for a moment. I know you can probably read it on the Elmo, but it might be helpful if you had it in front of you.

Ms. LEWIS. Thank you, Senator. There's a little bit of a glare. I would appreciate that.

Senator SARBANES. We'll get it to you.

Mr. BEN-VENISTE. I think 1135 is on the Elmo. Do you have that in front of you?

Ms. LEWIS. Yes, sir. Thank you.

Mr. BEN-VENISTE. It is dated 9/18/92. It is the typed note produced from the FBI file in Little Rock. It says:

> Jean Lewis of RTC was in the office today for Kell meeting with Stoll, Harris, Calhoun and Hall. Prior to, she asked me what status of Madison was, told her not decided, but meeting scheduled. After her meeting she waited for me. She again asked for status and was told she would have to ask the U.S. Attorney. She advised her boss, Richard Iorio, kept asking her to try to find out what it was we were doing. I reminded her of the sensitivity and that, even if the U.S. Attorney decided to go forward, these cases took longer than a month to determine what was there. She advised everyone above her in RTC was aware of the referral.

Now, does that refresh your recollection, Ms. Lewis, about your conversation with Special Agent Steven Irons?

Ms. LEWIS. I remember attending that meeting that Mr. Irons references in Little Rock, and I do remember speaking with him before and after the meeting.

Mr. BEN-VENISTE. That's a start.

The CHAIRMAN. It's a better start than that of a lot of witnesses I've heard heretofore. They couldn't even recall where they were.

Mr. BEN-VENISTE. We take one witness at a time, Mr. Chairman.

The CHAIRMAN. I understand, but I thought it would be interesting to make an observation. I know witnesses who can't even remember what they wrote.

Mr. BEN-VENISTE. Thank you. Ms. Lewis?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. Did you tell Agent Irons that your boss, Richard Iorio, kept asking you to try to find out what the FBI was doing with respect to your referral, after all it had been there all of 2 weeks already?

Ms. LEWIS. No, Mr. Ben-Veniste, I don't remember specifically posing that question to him.

Mr. BEN-VENISTE. Do you deny saying that to Agent Irons?

Ms. LEWIS. No, I'm not going to deny it. Obviously, Agent Irons remembers better than I, I guess. I don't recall.

Mr. BEN-VENISTE. You also said, according to Agent Irons, that everybody at the RTC was aware of the referral. Do you recall saying that?

Ms. LEWIS. I recall telling Steve that the people in my chain of command were aware of the referral, but I don't think I qualified it as everybody at the RTC.

Mr. BEN-VENISTE. Did you tell him that RTC-Washington was aware of the referral?

Ms. LEWIS. I may have because I knew Mr. Iorio had made them aware of the referral.

Mr. BEN-VENISTE. In your deposition, you claim that you had not made any contacts with Agent Irons from the time that you sent over the criminal referral until December 1992. Do you recall that testimony?

Ms. LEWIS. Yes, I do.

Mr. BEN-VENISTE. In addition to the references that I've provided to you—and I won't take up the time to go through it here, but we will make it part of the record—there are at least eight contacts, which are recorded by you, pressing the FBI and the U.S. Attorney's Office for information of a follow-up nature as to what was going on with your referral. Can you provide any explanation for that, Ms. Lewis?

Ms. LEWIS. As Mr. Iorio has already said, Mr. Ben-Veniste, during that timeframe, I was in frequent contact with the FBI because Paragould was an active and ongoing investigation. If, during any of those conversations, I posed the question about the Madison referral, I don't recall specifically doing so, but I'm certainly not going to deny that I may have asked.

Mr. BEN-VENISTE. Did you ever leave a phone message for Agent Irons in which you left word with his receptionist that you wanted him to call you back because you felt like you were being treated as a pariah because of your referral?

Ms. LEWIS. No. Actually, Mr. Ben-Veniste, I left that particular message in 1994 for Assistant U.S. Attorney Bob Roddey after I had attempted for 7 months to get a response from the U.S. Attorney's Office, and for the 7 months after the last nine Madison referrals went in, I could not solicit a return call from the U.S. Attorney's Office with very minor exceptions.

Mr. BEN-VENISTE. We'll try to provide the 1992 message that you left about feeling as though you were being treated as a pariah in a moment. While we're doing that, let me ask you, Ms. Lewis, how it could be that providing a criminal referral the target of which, Mr. McDougal, was an individual who had been prosecuted and acquitted, was completely broke, living in a borrowed mobile home, who had suffered a mental breakdown could alter the course of history?

Ms. LEWIS. Mr. Ben-Veniste, it's not my job to be the judge and jury on such matters. When I find evidence of criminality, I follow through on my procedures, I write my referrals, submit them to the appropriate authorities and leave it to them to be the judge and jury on that.

Mr. BEN-VENISTE. What I'm referring to is your reference to Agent Irons in August 1992, before you even sent the criminal referral over, that you wanted to be a part of this event that could alter the course of history. Now, surely you couldn't have been talking about the event being sending in a criminal referral targeting Mr. McDougal, could you have been?

Ms. LEWIS. I don't remember making that comment, sir.

Mr. BEN-VENISTE. You just indicated to us that you had no argument with the fact that Agent Irons' contemporaneous note, where he characterized your statement as being very dramatic, was accurate?

Ms. LEWIS. I do not take exception to Mr. Irons' notes because, as I said, I worked with Mr. Irons for a long time. I have a great

deal of respect and admiration for him, so I'm not going to argue with those notes. Knowing myself, I would characterize a comment like that something along the lines of oh, yeah, right, Steve, I'm going to be big in the middle of this because I'm sure it's really going to change the course of world history.

Mr. BEN-VENISTE. That would also explain why you spent all of your time on this little bank in Little Rock as opposed to $900 million of loss in First Federal and $600 million of loss in Savers Savings, but I'll move on.

Let me ask you this, Ms. Lewis: Did you, at the time that you first began your work in connection with Madison, have an opinion about then-candidate Bill Clinton?

Ms. LEWIS. No, sir. At that point, I knew very little about Mr. Clinton.

Mr. BEN-VENISTE. Did you ever express a view about Mr. Clinton to any friend or acquaintance of a derogatory nature?

Ms. LEWIS. Mr. Ben-Veniste, I think it's fairly well documented that I am a conservative, I am a Republican, and there may have been occasions upon which I may have made comments to my friends, but I don't think those are comments that are appropriate for a proceeding like this.

Mr. BEN-VENISTE. You don't think they are appropriate for a proceeding to inquire into whether you had a preconceived notion or bias against Mr. Clinton at the time you undertook this responsibility for providing a criminal referral? Let me ask you what you recall about expressing a negative view about Mr. Clinton.

The CHAIRMAN. Mr. Ben-Veniste, we've gone well beyond, and I've permitted latitude. I will permit latitude to all of the Members and to counsels, but when we start to get into the business of have you ever expressed an opinion politically to friends about X, Y, or Z, whether it's President Clinton, Governor Jim Guy Tucker or whoever it is, I think we're going a little far.

If you want to say did you ever tell any of your friends about the referrals, that's fine. Did you leak these referrals or the fact that you were working on these referrals, that's fine. Anything as it relates to her professional conduct—and I've permitted that to come in—as it relates to her work or breach of fiduciary responsibility or the responsibility imposed upon her as an investigator, fine. But we're not going to get into whether or not you're a Democrat or Republican. Mr. Iorio, I didn't ask him whether he's a Democrat or Republican——

Mr. BEN-VENISTE. Nor did I ask Ms. Lewis.

The CHAIRMAN. It doesn't matter. When we get into the business about whether or not you've expressed anything as it relates to somebody who is a candidate, well known for public office, people make expressions, and we're not going to get into whether she may have said he's too conservative, too liberal, too whatnot.

Why don't you proceed, but let's keep it on the line as it relates to her work and professional conduct. If you want to refer to conversations that she had with other people in connection with this, fine.

If we're going to get into the business of if you've ever expressed anything about Mr. Clinton, I have to tell you something, to my knowledge, I am not aware of her having leaked out any of this in-

formation or referrals or having given it in a manner that would have been detrimental. So, I think, if you want to look at that, if you have a suggestion that she may have done this, fine. Let's explore that and I'll restore whatever time—put an extra 3 minutes on and let's proceed.

Ms. LEWIS. Mr. Chairman, there is one part that I would like to clarify with regard to what Mr. Ben-Veniste just asked.

The CHAIRMAN. All right.

Ms. LEWIS. I did, Mr. Ben-Veniste, and I will freely admit this, keep my politics at the forefront of my mind as I worked on that simply because, knowing my own conservative views and knowing those of Mr. Clinton, I held myself to a much higher standard going through the documentation that I was working at to ensure that there was very significant and substantial evidence before even proceeding with that.

Mr. BEN-VENISTE. We'll get to the leaks——

Senator SARBANES. Mr. Chairman, let me just make this observation. First of all, no questions were asked by Mr. Ben-Veniste to Ms. Lewis whether she was a Republican or a Democrat or a conservative or a liberal. I think it's perfectly warranted to find out whether Ms. Lewis, as she went into this Madison matter in which she included the Clintons as witnesses in her referral, had a preexisting bias or strong attitude with respect to Mr. Clinton. It's a perfectly legitimate question.

She has just asserted that she made an effort to adopt a higher standard, but it's reasonable, then, to ask what were the preexisting biases that may have existed.

The CHAIRMAN. I think the inference was quite clear that somehow the undertaking of this matter was biased, not factual. The fact of the matter is there has not even been an allegation that in any way, time or place were she or Mr. Iorio or anybody else responsible for leaking out what could have been devastating and very damaging information.

If you want to look at the record on the work that was produced, her work product and that of her associates, you have three guilty pleas and three people under indictment, including the sitting Governor of Arkansas. Now, if we're going to dispute any of the findings, that's one thing, but I think the work product speaks for itself. She's done an outstanding job.

Senator BOXER. Mr. Chairman, may I ask——

Senator SARBANES. On that point, we're going to have to sort out between the first referral made on August 31, 1992 and the other referrals which came later. The August 31 referral, made roughly 60 days before the election, was then followed by a number of communications to find out whether the referral had been acted on, even though the period of time was clearly well within the normal course for examining these referrals.

It was not reasonable to expect those referrals to be acted on in that period of time. So I think it's a perfectly legitimate question to pursue, and I understand that the Chairman——

Senator SHELBY. Mr. Chairman, if I could, I believe the phrase was used something like this, that Ms. Lewis spent a lot of time on a broken down little bank. A little bank that you, Mr. Chairman—this investigation has brought three guilty pleas, three in-

dictments, probably more to come, but a hit or a loss to the American taxpayers of $60 million, and I resent——

Senator BOXER. Mr. Chairman——

Senator SHELBY. It's my time, if the Senator would wait.

When the counsel says she's spending her time on a broken down little bank, that the taxpayers lost $60 million on, I resent those kind of remarks.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Thank you. I just want to know from you, Mr. Chairman, what the rules are? I really sincerely do because, when your counsel was questioning and started to make what I personally—and I don't speak for anyone else on my side—thought were very reminiscent of McCarthyite tactics about witnesses being guilty, I never interrupted him, I never said anything. When our counsel says it's interesting that this person spent so much time on a $60 million loss when a $900 million loss wasn't even looked at, now we have interruption——

The CHAIRMAN. I did not interrupt nor did I hear any interruption.

Senator BOXER. I'm asking the question what the rules are about this hearing?

The CHAIRMAN. I've attempted to give great latitude. It is your time, and we will restore additional time. The fact is that I did indicate that I thought we were straying and going far beyond when we get into the business of what a person's views or thoughts are or whether a person may have had a favorable or unfavorable impression about whoever it is, whether it was the President or whether it was Jim Guy Tucker, et cetera, that is not relevant.

Now, if you have something that's relevant and, indeed, bringing up conversations that she had with respect to people as it related to the duties, that's relevant.

So my ruling was one that it went beyond the scope. Mr. Ben-Veniste, let's continue. You have at least another 6 minutes.

Senator SARBANES. Ten minutes.

The CHAIRMAN. Fine, 10 minutes.

Mr. BEN-VENISTE. Let me first establish, it is correct, is it not, Ms. Lewis, that I never asked you what your political affiliation was, in your deposition or here today?

Ms. LEWIS. No, sir, that's correct, you did not ask.

Mr. BEN-VENISTE. You volunteered that just now.

Ms. LEWIS. That's correct.

Mr. BEN-VENISTE. My only question to you was whether you had a very strong view about Mr. Clinton personally, which you expressed to others, of a very negative nature, even prior to the time that you began your investigation in 1992.

The CHAIRMAN. Don't answer that. We're going well beyond now. If you have something—that's well beyond.

Mr. BEN-VENISTE. Yes, I do.

The CHAIRMAN. Go ahead. Continue.

Mr. BEN-VENISTE. Is the ruling——

The CHAIRMAN. Does it mean because somebody has had a negative opinion of someone in public life or office that it's relevant at this hearing?

Senator SARBANES. Yes.

The CHAIRMAN. I don't believe it is.

Senator SARBANES. Yes.

The CHAIRMAN. The witness does not have to answer.

Senator SARBANES. We would take the answer and weigh it and evaluate it in the total context.

The CHAIRMAN. I think she went well beyond——

Senator SARBANES. Ms. Lewis has asserted——

The CHAIRMAN. Ms. Lewis went well beyond what she had to in terms of indicating that she was, in terms of her own political views, a conservative and differed with Mr. Clinton. As it relates to what she may or may not have indicated to people has no bearing here at this time.

As a matter of fact, we're looking into what took place, how did it take place, gathering the facts. If, indeed, in her gathering of facts, those facts that have been reduced to indictments in some cases, guilty pleas in some cases, pending investigations, has embarrassed people, you don't attack the person simply because she may have made disparaging comments about someone in political life.

This is still America, and people have a right to express their opinions about what they think of various candidates.

Senator SARBANES. Mr. Chairman, if that's a stipulation that Ms. Lewis, in fact, made such disparaging comments——

The CHAIRMAN. I didn't stipulate to that. I'm saying that it's irrelevant.

Senator SARBANES. I don't know that she needs to answer the question, but, otherwise, if it's not a stipulation, I think it's perfectly relevant to find out how much bias or preexisting prejudice she may have had as she went into this examination of the Madison matter.

The CHAIRMAN. Al Smith said it best, Senator. He said let's look at the record. If you look at the record in terms of what she's done and the manner in which people have attempted to obstruct her and Mr. Iorio, I think that's rather clear. I think that's rather pertinent.

I think when we get into the business of attempting to sidetrack by asking what her views were politically, as it related to a particular candidate, whether she said anything disparaging about him, that is the nature of American politics and if we're going to try to impute something evil to that we're going to be in big trouble.

Senator SARBANES. Let's find out whether that, in fact, is the case. That's a reasonable point, but she ought to answer the question.

Senator SHELBY. Mr. Chairman, I think you've been more than reasonable with the other side here, and I think you ought to go ahead and rule as the Chairman and go on.

The CHAIRMAN. The question is out of order.

Senator FAIRCLOTH. He should rule after he lets me speak.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. You made this referral in August 1992——

Senator SARBANES. Wait a second.

The CHAIRMAN. Wait. We're going to finish their time and then I'll turn to the Senator.

Senator FAIRCLOTH. If she wanted to hit him, she could have done it in August.

The CHAIRMAN. Let us continue.

Mr. Ben-Veniste, you can continue to examine.

Mr. BEN-VENISTE. But I may not inquire as to the issues of personal bias?

The CHAIRMAN. I didn't say that. If you want to say personal bias, let me tell you something, let's look at what the witness said. She said she bent over backward because she did have a difference of opinion and she kept that foremost so she would attempt to be fair.

That's how I read that. If we want to, we'll have the transcript read back to us. Would you like to do that?

Mr. BEN-VENISTE. No, I remember——

The CHAIRMAN. Let's accept it in terms of the question of bias, she answered quite clearly that was not the case and she went out of her way.

Mr. BEN-VENISTE. But now I'm asking about whether she had expressed a personal bias against Mr. Clinton on a very personal level, and if the ruling is that I may not ask that question, I will go on.

The CHAIRMAN. Did you have a personal bias toward any of the people that you were——

Senator SARBANES. That's not the question.

The CHAIRMAN. Toward Mr. Clinton, did you have a personal bias?

Senator SARBANES. Did she express a personal bias?

The CHAIRMAN. Now, if we're going to start saying that she may have indicated to somebody politically what her feelings were——

Senator SARBANES. Not politically. Strike politically.

The CHAIRMAN. How do we get in and differentiate? I would suggest that Ms. Lewis can indicate whether or not she had a personal bias. That certainly is well within the realm of a proper question, whether she did have a personal bias.

Mr. BEN-VENISTE. Ms. Lewis, did you express a personal bias about Mr. Clinton in 1992?

The CHAIRMAN. Oh, my God. As the tension mounts and fills the air of whether or not a personal bias was there.

Senator BOXER. Mr. Chairman, motivation is important and I don't think it's funny either.

The CHAIRMAN. Motivation? How about looking at the facts in the record?

Senator SHELBY. More important are the facts that she's trying to elicit here and that a lot of the other side don't want to bring out.

Mr. BEN-VENISTE. I got as far as asking a question.

Senator SARBANES. We've been trying very hard to bring out the facts, and we've had this question before us now for about 10 minutes, and Ms. Lewis is constantly prevented from answering by interruptions from the other side.

The CHAIRMAN. Let me say this: The Chair is going to make a ruling. As it relates to the question of personal bias, certainly, I think you're well within the right of people to ascertain, were you personally biased and did that interfere with any of your actions.

Now, that's a complete and thorough question. Did you have a personal bias and did that bias interfere with your actions? Did you take unwarranted actions as a result of that, as distinguished by whether or not you had a political bias or political views, did you have a personal bias that influenced your actions?

Mr. BEN-VENISTE. Mr. Chairman, am I still asking questions here? I don't understand.

The CHAIRMAN. I'm telling you if you're going to ask a fair question, the question comes down to was there any personal bias that interfered with the performance of her duties or affected the performance of her duties, that is a proper question.

Senator SARBANES. No, because the proper question is whether there was any personal bias. Then we need to evaluate on the basis of the answer to that question——

The CHAIRMAN. You can answer.

Senator SARBANES. —Ms. Lewis' conduct.

The CHAIRMAN. Now we're getting into—Ms. Lewis, go ahead.

Ms. LEWIS. Thank you. I'm going to take the silence as a shot this time. As to any kind of a personal bias, I had no personal bias against Mr. Clinton, didn't know Mr. Clinton. As far as my potential political bias, as I have already stated, I kept my conservative views and potential bias versus very liberal views at the forefront of my mind to make sure that I stayed with a higher standard of care in documenting the evidence and the allegations I was about to make because they were very serious.

Mr. BEN-VENISTE. Did you express to a friend of yours in 1992 your view that Mr. Clinton was "a lying bastard"?

Ms. LEWIS. Mr. Ben-Veniste, I cannot recall ever having made a statement like that.

Mr. BEN-VENISTE. I'll help you recall because we have, from the disk that you provided to this Committee, a letter, and I'm not going to show the rest of the letter to anyone, but I will show you the reference and ask you whether it refreshes your recollection that you so referred to then-candidate Clinton in February 1992?

Ms. LEWIS. I confess, I'm curious where you got this letter.

Mr. BEN-VENISTE. We got it from you.

Ms. LEWIS. I don't think this was on a disk I gave you, Counsel.

Mr. BEN-VENISTE. Apparently you didn't think it was on the disk, but it was. That's the funny thing about these disks. I don't understand how they do it, but they can find the stuff on the disk that nobody thinks is there. I hate it when that happens, but here it is, Ms. Lewis.

Ms. LEWIS. Obviously, Mr. Ben-Veniste, I will claim authorship of this document, and yes, sir, I did make that comment.

Mr. BEN-VENISTE. Thank you. Now, with respect to——

The CHAIRMAN. Mr. Ben-Veniste, could you furnish us a copy of this document?

Senator FAIRCLOTH. Mr. Chairman, is the statement not true?

Mr. BEN-VENISTE. If I may continue, Mr. Chairman. I've asked one question. I had 10 minutes. My red light is on.

The CHAIRMAN. Go ahead, continue. I would suggest this. I would like to see the document.

Senator SHELBY. Mr. Chairman, if Ms. Lewis said that, I'm sure she was joined by millions of other Americans who have said the

same thing over and over. There is nothing unique about that or about——

Senator FAIRCLOTH. Is it the truth, Ms. Lewis?

Ms. LEWIS. Senator Faircloth, you're not tripping me up on that one again.

Mr. BEN-VENISTE. If I could have 10 minutes, I'd like to explore the surreptitious taping of Ms. Breslaw.

The CHAIRMAN. Do you have that whole thing up there?

Ms. LEWIS. Mr. Chairman——

The CHAIRMAN. I mean, if you see the references as they relate to supposed relationships and the Governor's denial, I want to tell you if you took a poll of that question, you would find that probably more people have a feeling that maybe the former Governor was not telling the truth and, as some would say, would characterize it as being a lie.

Mr. BEN-VENISTE. There we have it. The opinion has just been expressed——

Mr. CHERTOFF. This is out of context. This is totally out of——

Mr. BEN-VENISTE. We can put the whole letter in, but I don't think you would want that to happen.

Mr. CHERTOFF. I don't think you would want to, given that it's a personal letter.

Mr. BEN-VENISTE. I haven't. There's been a request from the press, but we are not about to put that whole letter in.

Mr. CHERTOFF. Why don't you give the whole letter to the witness, Mr. Ben-Veniste, so she can see the reference to "he" is not the reference you're suggesting it is.

The CHAIRMAN. Let's give her the whole letter.

Ms. LEWIS. Gentlemen——

Senator FAIRCLOTH. Let's see the whole letter.

Mr. CHERTOFF. Just give it to her.

Senator BOXER. The reference is on that page to Gennifer.

Mr. BEN-VENISTE. Ms. Lewis, do you want to get into the rest of this letter? I'm prepared to respect your privacy with respect to the rest of it.

Ms. LEWIS. Thank you, Mr. Ben-Veniste. I do appreciate that.

The CHAIRMAN. Isn't it a somewhat humorous comment at the end as it relates to your son, if you take a look at that, or someone else?

Ms. LEWIS. I'm sorry, Mr. Chairman, what was your question?

Mr. BEN-VENISTE. Mr. Chairman, is my——

The CHAIRMAN. We're going to let you——

Senator SHELBY. Let her look at the letter.

Mr. BEN-VENISTE. It's 20 some-odd pages.

Mr. CHERTOFF. I think, in fairness, she ought to have been given an opportunity to look at the whole letter before she was asked about it, so let her have the opportunity now. I think it's on the second or third page early on. It's on page 3, I believe.

[Pause.]

Ms. LEWIS. Mr. Chairman, I've had a chance to review this.

The CHAIRMAN. Do you have a better frame of reference now?

Ms. LEWIS. Absolutely.

The CHAIRMAN. Would you care to comment on that?

Ms. LEWIS. Yes, sir, I would. Thank you.

The CHAIRMAN. Please.

Ms. LEWIS. This is a letter I sent to my oldest and dearest friend, complaining at length of a lot of interesting situations that were occurring in my life dealing with my former stepchildren. That particular context and that particular paragraph were dealing with one of my 14-year-old stepsons and a matter he was going through. Yes, I did put that comment in there as a political aside on the assumption that my good friend would understand what the reference was, why I was putting it in with the same context with my son who was undergoing some problems at that time. Frankly, Mr. Ben-Veniste, that's a real cheap shot.

Mr. BEN-VENISTE. Thank you, Ms. Lewis.

The CHAIRMAN. Was it in reference to the truthfulness of your stepson, is that the context in which you made that reference?

Ms. LEWIS. Yes, sir, it was within the context of the veracity of my son who had some serious emotional problems at that time.

The CHAIRMAN. It was one little snippet in part of a 20-page letter in which you were talking about various problems, et cetera, and one as it related to your 14-year-old stepson and the problems you had, and you related it to the truthfulness as it related to the then-Governor. It is not a letter about politics, is it?

Ms. LEWIS. No, sir, it doesn't deal anything at all with politics or my job. It was just an aside.

The CHAIRMAN. Fine.

Senator SARBANES. I think that makes it more relevant, Mr. Chairman, with respect to the question of bias because the letter, as Ms. Lewis has said, dealt with family members but her aside, which dealt with this particular politician, went on and made this judgment about him.

So I think it's very relevant to the bias condition and the fact it was made as an aside in the course of a letter devoted to other purposes, I think, gives it added weight, not less weight——

The CHAIRMAN. I——

Senator SARBANES. —because it demonstrates a certain frame of mind and point of reference with respect to then-Governor Clinton. That's all. We have it, you have it, and we'll evaluate it accordingly.

The CHAIRMAN. Exactly.

Senator SARBANES. But I think it's important that it be out here as part of the record.

The CHAIRMAN. I point out to my friend, Senator Sarbanes, that we just did get it, we did not have it, but we do have it now and we will evaluate it.

Mr. Ben-Veniste, you were going to ask another question then we're going to break for lunch.

Mr. BEN-VENISTE. I had 10 minutes, I thought.

The CHAIRMAN. No, you have one question.

Mr. BEN-VENISTE. I only got to ask one question. Did I take 10 minutes?

The CHAIRMAN. You certainly took much longer.

Senator SARBANES. Why don't we adjourn at 1:50?

The CHAIRMAN. We're going to adjourn no later than 1:50. Go ahead, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Lewis, I want to ask you some questions that were brought up about this tape. We've spent the whole morning listening to the tape. You taped, it is undisputed, Ms. Breslaw, a colleague of yours at the RTC, surreptitiously without her knowing it; correct?

Ms. LEWIS. I made the tape without her knowledge, yes.

Mr. BEN-VENISTE. You steered the conversation around to the things you wanted to discuss, knowing that the tape recorder was on, you had the advantage on her, did you not?

Ms. LEWIS. I did not steer the conversation in any particular direction, Mr. Ben-Veniste. Ms. Breslaw did a large majority of the talking.

Mr. BEN-VENISTE. You knew that the tape recorder was on and she didn't?

Ms. LEWIS. That's a fair statement.

Mr. BEN-VENISTE. Now, I want to focus on your claim that, magically, the tape recorder began to record of its own volition and the various versions of this story that you have told under oath up to this point.

In the first instance, you testified, did you not, that this tape recorder was 8 years old and would go on and off. It would record on its own for a period of time prior to the time that Ms. Breslaw came to your office; right?

Ms. LEWIS. I believe what I testified was that in the December proceeding the recorder began to hiccup, I think was the way I put it. Some days it would record when I wanted it to, some days it would not record when I wanted it to.

Mr. BEN-VENISTE. Did you say it recorded on its own prior to the time that it recorded Ms. Breslaw?

Ms. LEWIS. Yes.

Mr. BEN-VENISTE. So the recorder managed to capture the entire conversation that you had with Ms. Breslaw, which is about 35 or 40 minutes; right?

Ms. LEWIS. That's correct.

Mr. BEN-VENISTE. There was a 1-hour cassette in that recorder so it was fortuitous that there was enough tape on there to tape the whole conversation; right?

Ms. LEWIS. Yes.

Mr. BEN-VENISTE. Now, the fact is that your explanation for the tape recorder going on on its own is one which has raised some questions—you'll be quick to admit, I take it—as to whether that's, in fact, what happened or whether, in fact, you deliberately recorded Ms. Breslaw.

The magical tape recorder, and I'm holding up the tape recorder which you subsequently purchased after Ms. Breslaw's taping, the tape recorder that you used, you say you threw away shortly after Ms. Breslaw was taped surreptitiously by you; correct?

Ms. LEWIS. I disposed of the recorder. I don't recall exactly when.

Mr. BEN-VENISTE. You said it never worked again after Ms. Breslaw was taped with it; right?

Ms. LEWIS. No, sir, I don't think that's accurately how I testified.

Mr. BEN-VENISTE. What do you recall about whether the tape recorder ever worked again?

Ms. LEWIS. I seem to recall that I tried it a few more times, and it finally died. At that point, I replaced it with the one, I believe, you're holding in your hand.

Mr. BEN-VENISTE. "Finally" being a week or so later?

Ms. LEWIS. Within a matter of days, I believe, yes, sir.

Mr. BEN-VENISTE. It's true, is it not, that just before Ms. Breslaw visited your office, you purchased a supply of microcassettes for your tape recorder?

Ms. LEWIS. I believe I purchased a group of microcassettes, or a box, sometime between December and February.

Mr. BEN-VENISTE. Sometime prior, according to your testimony—I can read it back to you—in the days prior to Ms. Breslaw's visit, you said?

Ms. LEWIS. Yes, sir, I recall that.

Mr. BEN-VENISTE. OK. Now, you had the tapes on hand, you had the recorder on hand. Our issue is—and we can resume with this in a little while after lunch because we won't have time to fully develop it—the issue is whether, in fact, you tape-recorded Ms. Breslaw with the old tape recorder which malfunctioned and magically came on to record her conversation or whether, in fact, you deliberately recorded her conversation with the new tape recorder?

Ms. LEWIS. Mr. Chairman, may I respond to that?

The CHAIRMAN. Absolutely.

Ms. LEWIS. Thank you.

Mr. Ben-Veniste, I purchased that new recorder well after I had that conversation with Ms. Breslaw. As I have previously testified, the old one worked sometimes, didn't work sometimes, it was 8 years old, it was used on a regular basis, and I did throw it away when it ceased to function. I did not deliberately set out, which I believe is your inference, to trap Ms. Breslaw in any way.

Mr. BEN-VENISTE. We will explore that when we come back, with the Chairman's permission, of course.

The CHAIRMAN. Absolutely. I think it's also fair to say that at some point in time you did observe it, and then you made a conscious decision to continue the recording; is that correct?

Ms. LEWIS. That's absolutely correct.

Senator BENNETT. Mr. Chairman, may I make one final observation?

The CHAIRMAN. Senator, yes.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. With respect to the reference to candidate Clinton, may I say that I have heard Members of the U.S. Senate who are not Members of my party say, in confidence and privacy, things as derogatory about the President as that which is contained in this letter.

I do not intend to embarrass them by elevating that comment to a serious statement of their intent. In a moment of frustration, in a moment sometimes of humor, in a moment sometimes to make a point, I have heard Senators say things, which taken out of context and held up before the world, could sound like they were publicly denigrating their President. I did not take your comment——

Senator BOXER. Would the Senator yield?

The CHAIRMAN. No, let the Senator finish.

Senator BOXER. I just asked——

Senator BENNETT. I'll be happy to yield when I finish my comment.

I did not take their comments as being the true statement of their motives or their positions. I took it as blowing off steam in a certain circumstance. I believe the same thing for someone typing a letter spontaneously looking for a metaphor that is in the news and picking that out in the news should not be improperly considered here.

Senator BOXER. Would the Senator yield?

The CHAIRMAN. Yes, Senator Boxer.

Senator BOXER. I want to say to my friend, of course, people make all kinds of comments. That wasn't the point of our counsel. It was made by someone who was in the middle of an investigation. That was the whole point, not the comment itself.

Senator BENNETT. What is the date of this letter? February——

The CHAIRMAN. February 1992. This was quite a——

Senator BENNETT. February 5, 1992.

Senator BOXER. Then the investigation.

Mr. BEN-VENISTE. March was the investigation, Senator. If I may respond to Senator Bennett, with great respect for your view, in the presence of the comment that "I have given up other job opportunities to be a part of an event that may change the course of history," one, looking at these two comments together, might indicate—and I think it's our job to bring that forward and let people evaluate it for themselves—but one might indicate, Senator, a predetermined bias upon which action was taken, and we can only explore these things one thing at a time as we go through this.

Senator BENNETT. I can understand that, but given the date of this letter and the context of the letter and the point she was trying to make, my point is I find it a pretty far stretch.

The CHAIRMAN. We stand in recess. We'll come back at 2:45 p.m.

[Whereupon, at 1:53 p.m., the hearing was recessed, to be reconvened at 2:45 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Ms. Lewis, let me, if I may, get to a central question for these hearings which we keep going around. The American people have had trouble narrowing the issue down to something easily understandable. They've watched and watched but they haven't been able to do it.

You wrote a criminal referral in which the Clintons were named as witnesses to a criminal act. Very briefly, boil it down to the essentials. What was the criminal act?

Ms. LEWIS. Senator Faircloth, the criminal act was committed by Mr. McDougal in attempting to create the appearance of funds that did not exist through his use of several companies he controlled and the fact that he controlled their checking accounts in his bank. Because Mr. and Mrs. Clinton and Mr. and Mrs. McDougal were business associates in Whitewater, there was a very strong possibility that the Clintons knew how Mr. McDougal was kiting these funds and using the funds that went through that Whitewater account to pay mortgages that were owed by both the Clintons and McDougals, to pay accounting fees for professional services that had been rendered to Whitewater, meaning to the Clintons and the McDougals, and also to transfer funds to other financial institutions on Whitewater's behalf.

Senator FAIRCLOTH. How were the Clintons witnesses?

Ms. LEWIS. Because they were basically the other half of the Whitewater Corporation, they should have had cause to understand what Mr. McDougal was doing and how he was coming up with the money to pay their corporate obligations.

Senator FAIRCLOTH. Roughly just in years, how long did this go on? I mean, 2 years, 3 years?

Ms. LEWIS. I believe, Senator, it went on for a period of roughly 3 years.

Senator FAIRCLOTH. All right. Finally, in your opinion, were they more than just witnesses? How is it possible for two brilliant lawyers, as they are supposed to be, both very erudite, very sophisticated people, how is it possible, and do you think it's possible, that this could have gone on for 3 years and they not have known about it and they're partners, 50/50, in this joint venture?

Ms. LEWIS. I believe, Senator, during the previous House Banking Committee hearings information came to light that Mrs. Clinton was factually much more involved in Whitewater after—it was either late 1987 or into 1988. In doing my criminal investigation, I'm not placed in a position of responsibility that requires that I judge these matters. All I do is produce the documentation and the evidence and make the allegations, but I have strongly recommended that then the U.S. Attorney and now the Independent Counsel pursue that and look at it because I do believe that there is a possibility that the Clintons may have known that.

Senator FAIRCLOTH. Did not Mrs. Clinton ask for or even get power of attorney?

Ms. LEWIS. Yes, sir, I believe that's correct. I believe she did. I think, as I've stated in my opening statement, if the Committee really wishes to get to the bottom of what Mr. and Mrs. Clinton knew, then perhaps maybe they should be invited in here and asked.

Senator FAIRCLOTH. I have suggested that on a number of occasions. Ms. Lewis, how long were you a RTC criminal investigator?

Ms. LEWIS. Almost 4½ years.

Senator FAIRCLOTH. You didn't choose to investigate the Madison Guaranty, you were told to do so by your supervisors?

Ms. LEWIS. That is correct.

Senator FAIRCLOTH. Do RTC criminal investigators have subpoena power or authority?

Ms. LEWIS. No, sir, Senator, but if we did we sure could answer a lot of questions.

Senator FAIRCLOTH. So, basically, in doing the RTC criminal investigation, you simply follow a paper trail and you don't have the authority to subpoena witnesses and go into it deeper?

Ms. LEWIS. That's correct, sir.

Senator FAIRCLOTH. So you make a criminal referral to the RTC and the Justice Department and, of course, they do have, and you are asking the Justice Department to undertake a preliminary investigation in which the Justice Department may use the subpoena power in order to determine whether, in fact, crimes were committed; that's right, isn't it?

Ms. LEWIS. Yes, sir.

Senator FAIRCLOTH. All right. So that's what you were saying when you sent this recommendation of a criminal investigation with the Clintons as witnesses?

Ms. LEWIS. Yes, sir. It was a recommendation that, based on the evidence, we believed there was possibility and enough evidence to conclude that a crime may have been committed and recommended to the U.S. Attorney and FBI they investigate further.

Senator FAIRCLOTH. Your criminal referral is not a trial-ready document. It's simply laying out the facts as you have found them for the FBI and the Justice Department to conclude an investigation?

Ms. LEWIS. Yes, sir, it's a reasonable expectation that a crime may have occurred. It's not intended to be a trial-ready document.

Senator FAIRCLOTH. You submitted, along with your supervisors, 10 trial referrals related to Madison Guaranty Savings & Loan in 1992 and 1993; is that correct?

Ms. LEWIS. Yes, sir.

Senator FAIRCLOTH. Two of the 10 criminal referrals are what I'll call criminal referrals 190 and 198. Now, I understand from your opening statement that these two criminal referrals were used by Independent Counsel Starr to bring about the August 1995 21-count indictment against Jim and Susan McDougal and current Governor Jim Guy Tucker; is that correct?

Ms. LEWIS. That's correct, Senator Faircloth. In fact, there was actually a third that factored into it as well, number 199.

Senator FAIRCLOTH. I'm sorry, there was what?

Ms. LEWIS. A third referral that factored into those indictments and that was number 199.

Senator FAIRCLOTH. As Senator Shelby said earlier, 21 counts of your referral were the backbone of the 12 counts.

Ms. LEWIS. Twelve of the counts out of the 21——

Senator FAIRCLOTH. Resulted in criminal indictments?

Ms. LEWIS. That's correct.

Senator FAIRCLOTH. Would you tell me in some detail—usually we get that here anyway—what you uncovered in your investigation and how it relates to Mr. Starr's indictments?

Ms. LEWIS. Did you want me to do that with regard to each of those three referrals, Senator?

Senator FAIRCLOTH. I'm sorry?

Ms. LEWIS. Did you want me to do that with regard to each of those three referrals?

Senator FAIRCLOTH. No, you can just tell us generally about your investigation and how it related to the indictments.

Ms. LEWIS. Initially on number 190 it was a question of a misappropriation of funds out of a loan that had been made by Madison to Governor Tucker. The RTC found evidence that Governor Tucker had misappropriated those funds and applied them to pay off an unrelated debt at Saver Savings, and having done so, we made that allegation and sent the referral in and, in fact, Mr. Starr did use that referral as a basis for indictments and it was on that exact transaction that several counts in the indictment were based.

Senator FAIRCLOTH. Ms. Lewis, we now know that when the RTC lawyers stopped you from sending the criminal referrals to the Justice Department, when the RTC lawyers stopped you, it actually gave Jean Hanson the time to share the information with other members of the Treasury Department and then pass it on to the White House; is that correct?

Ms. LEWIS. That is my belief, Senator, yes.

Senator FAIRCLOTH. In your opening statement you mentioned that you were told not to return a call placed to you from Special Prosecutor Robert Fiske's office. Is that right, and who told you not to return the call?

Ms. LEWIS. Yes, sir, that is absolutely correct. Mr. Iorio advised me that Mr. Dudine in Washington had instructed him that I was not to return the call, and I believe the basis for that instruction generated with Mr. Hindes in the PLS.

Senator FAIRCLOTH. Who was it—Mr. Who?

Ms. LEWIS. Mr. Tom Hindes.

Senator FAIRCLOTH. But who was it that told you not to return the call?

Ms. LEWIS. Mr. Iorio is the one who passed the instruction to me that Mr. Dudine had stated I was not to return the call.

Senator FAIRCLOTH. Mr. Dudine?

Ms. LEWIS. Yes, sir.

Senator FAIRCLOTH. You were also told by Assistant Attorney General Thomas Hindes that he was to be notified of any contacts by the Special Prosecutor's Office and you say you were told by Special Washington Attorney Gabrellian that any meetings you had with Mr. Fiske's staff were to be arranged and attended by RTC lawyers.

Would you explain in detail what these people said to you and why, in your opinion, they were so afraid of you talking to the Spe-

cial Prosecutor? What was it about you that they were horrified of you talking to Mr. Fiske?

Ms. LEWIS. Senator Faircloth, I haven't quite figured that one out yet. I wish I knew what it was that did cause that, but they did, in fact, tell me that I could not return the calls to Mr. Fiske's office, that any meetings I had with Mr. Fiske would have to be scheduled through the Washington PLS and attended by a PLS attorney, and that any further communications that went out of Criminal Investigations would be monitored and approved by the PLS before those letters could be sent. Plus, with regard to Mr. Hindes' comment that he wanted to be advised of random contacts, I found that characterization a bit on the ridiculous side because I don't think that was a random contact at all.

The Criminal Investigations Department generated those referrals and I believe that is specifically why Mr. Fiske's office contacted us, to talk about those referrals. I don't think there was anything random to it.

Senator FAIRCLOTH. You were not normally told not to contact—I mean, this was an instruction that you didn't normally get in your work as a counselor there, was it not? This was a special case, very much so?

Ms. LEWIS. Very much a special case, sir. It was a standard procedure for the investigators to communicate on a regular basis with both the FBI and the U.S. Attorney's Office in the normal course of their jobs. So this was a first.

Senator FAIRCLOTH. You were examined pretty thoroughly and a lot of conversation went on this morning, and I want to clear up a misconception that you may have been overzealous on the subject, but you wrote a referral on August 31, 1992, and you never heard anything from anyone.

Now, contrary to what the implications were this morning, if you had been going after Bill Clinton, you could have released the fact that you had written the referral to the press—this was before November 1992—and you did not. So I think that pretty much eliminates the insinuation that you were overly zealous as a prosecutor or were out to get Bill Clinton. If you would have wanted him, you could have had him in August. You didn't start trying to find out what happened to your referral until 9 months later, in May 1993.

Ms. LEWIS. I made an inquiry as to the status in December 1992, and that's when I was directed to the U.S. Attorney's Office. It was at that point that Mr. Iorio said let's wait and follow it up later and so in May 1993, I did start looking again, but yes, sir, you're right, I——

Senator FAIRCLOTH. That's 9 months after you had filed it?

Ms. LEWIS. That's correct.

Senator FAIRCLOTH. Let me clear up another misconception that happened here. Madison Guaranty was due to undergo a criminal review in August 1992 and this decision was made in August 1991. This was long before Bill Clinton was really known outside of Arkansas. Is that date correct?

Ms. LEWIS. Yes, sir.

Senator FAIRCLOTH. The decision to begin an investigation in Madison in April 1992, just 4 months earlier, was made because of news reports in The New York Times; is that not correct?

Ms. LEWIS. When the Times article appeared, I was asked to make a determination as to if Whitewater had caused a loss, as was alleged in Mr. Gerth's article. Based on the preliminary research we did and the level of criminality that we found, I went to Mr. Iorio. He said no, go ahead and continue with it, follow your leads and when you are concluded with this, go on to your next priority.

Senator FAIRCLOTH. Now, as I understand it, prior to submitting the two criminal referrals to the Justice Department which Mr. Starr used in his followup, you are saying that lawyers at the RTC took the unprecedented step of holding up you and your supervisors from submitting them to the Justice Department; is that not correct?

Ms. LEWIS. Yes, sir, I believe they did.

Senator FAIRCLOTH. This is the first time you ever had that happen with RTC lawyers?

Ms. LEWIS. Yes, sir.

Senator FAIRCLOTH. Mr. Iorio, there were news reports during your testimony before the House that you had investigated money laundering at Madison and the possible involvement of Dan Lassiter. Did you, in fact, investigate this and what did you find out? Tell us somewhat in detail. I'm interested in Mr. Lassiter.

Mr. IORIO. We were unable, because of our lack of subpoena authority, to put all the pieces together to factualize what we thought might have occurred. The bits and pieces of information that we had couldn't get us there because it just didn't fit together, so we turned that information over to the Independent Counsel and I would trust that he has or will investigate the possibility of that occurrence.

Senator FAIRCLOTH. But you have heard nothing from it since you turned it over?

Mr. IORIO. No, I have not.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. Ms. Lewis, I'm not clear, when you enumerated in your opening statement the indictments brought by the Independent Counsel, which of your referrals you were keying to the indictment.

Ms. LEWIS. Did you want me to enumerate the numbers for you, Senator, if I understand your question correctly?

Senator SARBANES. As I understand it, there were eight referrals that you made. When did you make those referrals?

Ms. LEWIS. There were a total of 10. The first one was in 1992 and the other nine were in 1993, and it was a collective group effort for those nine referrals.

Senator SARBANES. As you understand it, was the indictment keyed primarily to the nine referrals you made in 1993?

Ms. LEWIS. The indictment was based, in large part, on the work done by the RTC that was contained in some of those referrals, yes, sir, but not the entire indictment.

Senator SARBANES. But the referrals that the indictment was keyed to are the referrals made in 1993; is that correct?

Ms. LEWIS. Yes, sir, I believe so.

Senator SARBANES. All right. Now, on the 1992 referral, I'm not clear from the questions you just answered whether it's your testimony that you made no inquiries or made no representations about the status of your referral until December, when you had made it at the end of August?

Ms. LEWIS. That's what I recall, Senator Sarbanes, yes, sir.

Senator SARBANES. I thought this morning when we had that questioning off of the testimony of Agent Irons that you indicated that you did, in fact, raise that with him?

Ms. LEWIS. Mr. Irons' contemporaneous notes do show that, sir, and I did indicate that I had frequent contact with him, but I don't recall specifically making inquiries about that referral.

Senator SARBANES. Are you denying that that took place in light of your assertion that no contacts were made until December?

Ms. LEWIS. No, sir, I'm simply saying that Mr. Irons and I did have conversations and if he recalls I made those inquiries, I have no reason to dispute him but I do not recall having made them.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. I'd like to ask you who the U.S. Attorney was in August and September 1992, when you submitted your criminal referral?

Ms. LEWIS. Charles Banks.

Mr. BEN-VENISTE. Mr. Banks was a Republican appointee of President Bush, was he not?

Ms. LEWIS. Yes, sir.

Mr. BEN-VENISTE. Mr. Banks was the person who was responsible for determining whether your criminal referral had any merit and should be pursued, isn't that so?

Ms. LEWIS. He should have been the final authority, yes, sir.

Mr. BEN-VENISTE. Let's put up FBI Exhibit 1000 and provide a copy of that to Ms. Lewis, please. FBI 1000 is a letter dated October 16, 1992, by Mr. Banks to Mr. Don Pettus, who was a special agent in charge of the FBI office in Little Rock; is that correct?

Ms. LEWIS. Yes, sir, to my knowledge.

Mr. BEN-VENISTE. All right. If you turn to page 2——

Senator BOND. Excuse me, Mr. Chairman. Are there copies of that letter for the rest of us?

The CHAIRMAN. Could we have——

Senator BOND. Mr. Chairman, I think this comes from the talking points from the White House that, according to Dateline, were prepared to use in attacking Ms. Lewis, and I have some excerpts from the White House talking points, page 3 of the White House talking points, but I'd like to see the full letter.

Mr. BEN-VENISTE. Excuse me, Mr. Chairman. This is a document that we received from the FBI in response to our request many months ago, Senator, and it has been testified to by Mr. Banks and by Mr. Pettus. If I may——

Senator BOND. OK, I have the letter, Mr. Chairman. I note this is also on page 3 of the White House sheet for attacking Ms. Lewis. I just wanted to make sure it was the same letter.

The CHAIRMAN. OK. So noted.

Mr. BEN-VENISTE. May I continue, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BEN-VENISTE. I'd like to read from Mr. Banks' letter at page 2. "While I"—and this is on the issue of this "October surprise."

Ms. LEWIS. Mr. Ben-Veniste——

The CHAIRMAN. Wait a minute. What is this "October surprise," Mr. Ben-Veniste?

Mr. BEN-VENISTE. Here it is, Mr. Chairman. "While I do not"——

The CHAIRMAN. Are we going to read the whole letter?

Mr. BEN-VENISTE. Yes, sir.

The CHAIRMAN. Let's read the whole letter.

Mr. BEN-VENISTE. If I can read my portion on my time. I seem to lose time very quickly here.

The CHAIRMAN. No, let me say this to you. When we start to characterize things as "October surprises" that you introduce without—it's just wrong, it's not right and if you want to refer to a letter, let's refer to the letter.

Mr. BEN-VENISTE. All right. If I may, Mr. Chairman.

The CHAIRMAN. Yes, go ahead.

Senator SARBANES. Mr. Chairman, on not taking it out of our time, why don't we read the whole letter.

The CHAIRMAN. Let's read the whole letter.

Mr. BEN-VENISTE. The letter says:

Dear Mr. Pettus, this is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

That's referral C0004, the criminal referral that we've been talking about.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried out beyond a reasonable doubt.

The only allegations having any credibility worthy of a possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost moneys from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you've been ordered to do an immediate review to determine if an investigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

Continuing on with page 2:

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming Presidential election. You and I know in investigations of this type, the first steps, such as issuance of Grand Jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to 'legitimize what can't be proven.'

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of

Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States—referring to President Bush.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event that I conclude that their case should be declined, which at this point is a distinct possibility, the Department of Justice can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of this case.

For your information, in the event I receive any press inquiry from any source whatsoever, I am going to refer them to the supervisory officials in the Department of Justice and/or the Resolution Trust Corporation.

Thank you. Best regards. Charles A. Banks, United States Attorney.

The CHAIRMAN. Fine. Who is this letter written to?

Mr. BEN-VENISTE. It was written to the special agent in charge of the Little Rock FBI office.

The CHAIRMAN. Fine.

Mr. BEN-VENISTE. Now——

Senator SARBANES. On October 16th.

The CHAIRMAN. On October 16th. Again, Mr. Ben-Veniste, the point is that there was no leaking of information from Ms. Lewis. This letter was not directed to her, it was directed to an FBI agent and I fail to understand how it is that this would impact on the testimony of Ms. Lewis, but go ahead. It's your time. Restore the time.

Mr. BEN-VENISTE. I can answer that for you, Mr. Chairman. The reason——

The CHAIRMAN. You'll do it on your time.

Senator SARBANES. All right. We're on our time.

Mr. BEN-VENISTE. I'll be pleased to do it. The reason why it is relevant is because there was pressure being put on the FBI office and then the U.S. Attorney to do something.

The CHAIRMAN. Not by Ms. Lewis.

Mr. BEN-VENISTE. Ms. Lewis contacted the FBI and the U.S. Attorney's Office by our count, according to records in the possession of this Committee, on eight separate occasions between August 31st and December 1992, notwithstanding Ms. Lewis' sworn denial of having done so.

The CHAIRMAN. Indictments have proceeded as a result of the work and convictions have been obtained, notwithstanding Mr. Banks' indication—and it's understandable at a particular period of time—of not going forward. As he says, there is a distinct possibility that something would come of it and obviously something did.

Mr. BEN-VENISTE. That's what we're dealing with.

Senator SARBANES. Mr. Chairman, they did not come from this referral. I mean, we've just had testimony that, to the extent the indictments are keyed to any referrals, they were keyed to the ones that were made in 1993 and not to this referral in 1992. Now, Banks obviously had his doubts about this referral, as did a number of other people within the Department of Justice who reviewed it, and that's the referral Ms. Lewis made.

The CHAIRMAN. I would suggest this is nothing more than a red herring being dragged out. The fact of the matter is that Ms. Lewis was suspended by Resolution Trust people because they were obviously upset that she was getting close to exposing what was taking place, which was criminal conduct in this bank.

Now, you can drag in all of the letters that you want as it relates to somebody who is making inquiries to pursue an investigation. It certainly doesn't reflect on the accuracy of what she has brought before this Committee, but go ahead.

Senator SARBANES. The suspension that you are talking about occurred in August 1994, well after Ms. Lewis had provided Congressman Leach these referrals and a lot of other information.

The CHAIRMAN. I guess now we would say that her work hasn't had anything to do with uncovering the fraud that did take place. I guess people pled guilty—would we suggest they plead guilty but they really weren't guilty?

Senator SARBANES. I think that's true on the first referral——

Senator BOXER. Mr. Chairman, who has the time?

Senator SARBANES. —which is the focus of these questions——

Senator BOXER. Who has the time?

Senator SARBANES. —on the 1992 referral, made on August 31st, and then pursued very intently and about which the U.S. Attorney and others within the Department of Justice expressed a great deal of skepticism, and I don't believe that referral was at the base of any of the indictments.

Mr. BEN-VENISTE. Now, if I may, Mr. Chairman, I need to ask questions to develop this information. We're dealing chronologically with the 1992 criminal referral that Ms. Lewis submitted on August 31, 1992, and if I may continue.

Ms. Lewis, with respect to the certain assumptions and presumptions that you made regarding Mr. or Mrs. Clinton's knowledge, is it correct to say that you acknowledge that there was no evidence that Mr. Clinton or Mrs. Clinton knew that Mr. McDougal was involved in this check kiting among his different companies? Isn't that so?

Ms. LEWIS. That's correct, Mr. Ben-Veniste, I never stated there was evidence to that effect.

Mr. BEN-VENISTE. Indeed, when the referral was evaluated by Mr. Banks, he testified that the referral did not cite to a tangible document or witness, to anyone that says that these people have knowingly participated in a criminal fraud on this institution. That's at page 33 of Mr. Banks' deposition.

Mac Dodson, who was the Deputy and a career prosecutor in the Little Rock office serving under Mr. Banks, stated, "I don't think there was anything in the referral that indicated any wrongdoing by any of the witnesses." That was Mr. Dodson's deposition at page 13.

Special Agent Steven Irons testified, "Ms. Lewis had listed on her referral and stated what she thought the involvement of the Clintons was, and I've said that, based on my review, I don't agree with the characterization that they were necessarily aware of the check kiting activity." That is at page 227 of Mr. Irons' deposition.

Fletcher Jackson, a career prosecutor in the U.S. Attorney's Office in Little Rock, testified, "Basically, all it was was McDougal was overextended on debt. He was doing his debt carry by doing all of these maneuvers and manipulations. No more. No less." That is Mr. Jackson's deposition testimony at pages 69 and 70.

Special Agent in charge of the Little Rock office Pettus testified under oath, "There was no reason to believe based on the referral

or the evidence cited in the referral that Bill Clinton knew any alleged wrongdoing regarding check kiting or campaign contributions."

Mr. Johnson, another career prosecutor in Little Rock, testified, "It amazed me" that Ms. Lewis would conclude that forgery had occurred based solely on her own observation. He testified that he thought that Ms. Lewis was "reckless" for doing so.

Mr. Jackson testified, "What I had indicated" to Banks "was it was an in-house check kite, that you would have to do more work on it, you would have to get records and take the kite forward to see if they wound up with an overdraft in one of these accounts; in other words, if you had a loss other than just the loss of interest. And the main thing I was telling him is I wouldn't want to do it because of the acquittal." There was a prior acquittal. That is Mr. Jackson's testimony at page 60 of his deposition.

The CHAIRMAN. Mr. Ben-Veniste, you are well over the time and I permitted you to do that. Do you have a question?

Mr. BEN-VENISTE. What I would like to do, Mr. Chairman, is ask whether there was a Federal crime involved in a check kite that involved one bank?

Ms. Lewis.

Ms. LEWIS. Yes, Mr. Ben-Veniste, I believe there was and I cited my allegations in the referral as to my belief.

Mr. BEN-VENISTE. What Federal crime would that be?

The CHAIRMAN. Would you let her answer? Go ahead.

Ms. LEWIS. What Mr. McDougal was doing, in my view, was not simply writing bad checks. That check kite involved a number of accounts in the institution and to me that constituted a basis to look at it further for bank fraud, which is the basis upon which I made the recommendation.

In addition to what you've just said, several times people have said maybe there was nothing prosecutable on the part of the witnesses. RTC referrals go in requesting that they look at the suspects and recommending that they talk to the witnesses. If in case they find the witnesses have done something wrong, then it's their judgment call, sir, not mine. Because the Clintons were half of that corporation, I felt it was prudent to name them in there as witnesses.

Mr. BEN-VENISTE. Let me ask you now to comment on Mr. Johnson——

The CHAIRMAN. No, I'm going to ask now that—we've gone well beyond. I'm going to try to hold us—when the light goes on, whoever might be asking the question, finish the question, but then otherwise we are just going to——

Mr. BEN-VENISTE. But when I had to read the whole letter, Mr. Chairman, you said you would give me——

The CHAIRMAN. No, I took the light off. That did not count against your time. You'll come back.

Senator Shelby.

Senator SARBANES. I think your suggestion that we adhere to the light, though in a rigorous matter, is a good suggestion. I strongly support that.

Senator SHELBY. I hope you'll do it for everyone, Mr. Chairman.

The CHAIRMAN. Yes, we will.

Senator SHELBY. Ms. Lewis, let's get back on track here. You were a career employee, were you not?

Ms. LEWIS. No, Senator, actually I was not.

Senator SHELBY. What were you? What was your status?

Ms. LEWIS. I was referred to as an LG employee.

Senator SHELBY. What does that mean?

Ms. LEWIS. I believe it means liquidation grade. Because the RTC had such a short life-span——

Senator SHELBY. Because it was going to be liquidated itself?

Ms. LEWIS. There you go, yes.

Senator SHELBY. But you were not a political appointee?

Ms. LEWIS. No, sir.

Senator SHELBY. What about your colleague there, he was not a political appointee, either, was he?

Mr. IORIO. No, I was not.

Senator SHELBY. Both of you were in the investigative end of the RTC; is that right?

Ms. LEWIS. Yes, sir.

Senator SHELBY. The little broken down bank, to use the phrase that's been used earlier today, was the Madison bank; is that right? The one that's been referred to as the little broken down bank in Arkansas——

Ms. LEWIS. I believe——

Senator SHELBY. —with the $60 million loss?

Ms. LEWIS. —that was the inference, yes, sir, I think so.

Senator SHELBY. Now, $60 million is a lot of money to a lot of people. Would that be a lot of money to you?

Ms. LEWIS. Yes, sir.

Senator SHELBY. Let's get into sequence here, if we can, in the short time I have.

In 1992, if I recall, you made a referral to the U.S. Attorney's Office in Little Rock. That was your first referral?

Ms. LEWIS. Yes, sir.

Senator SHELBY. That was rejected or nothing was done on it ultimately; right?

Ms. LEWIS. Correct.

Senator SHELBY. Subsequently to this, in 1993, as you continued your investigation, you made what, nine more referrals?

Ms. LEWIS. Yes, sir, the investigative team generated nine more.

Senator SHELBY. Not just you. Tell us again who was on the investigative team besides yourself.

Ms. LEWIS. Mr. Mike Caron, who was the investigator that ultimately replaced me when I was removed from the investigation; Mr. Ed Noyes, Mr. Randy Knight and myself; and then Mr. Ausen and Mr. Iorio basically overseeing and monitoring the project.

Senator SHELBY. So this was not just something you would do on your own and send down, it was teamwork and it was supervised, was it not?

Ms. LEWIS. Yes, sir.

Senator SHELBY. In 1993, you then made nine referrals of possible criminal misconduct to the U.S. Attorney's Office in Little Rock; is that correct?

Ms. LEWIS. That's correct.

Senator SHELBY. Now, in sequence, what happened on that? Was that rejected?

Ms. LEWIS. The referrals were submitted on October 8th.

Senator SHELBY. October 8, 1993?

Ms. LEWIS. Yes, sir. They were received by Ms. Casey's office, from what I understand, on October 12th.

Senator SHELBY. Was Ms. Casey appointed by President Clinton to the U.S. Attorneys job?

Ms. LEWIS. Yes, sir, and, as a matter of fact, I was told that the referrals had arrived on her desk the very day she was sworn in.

Senator SHELBY. How long did they stay on her desk, roughly?

Ms. LEWIS. As far as I know, Senator Shelby, it wasn't until she recused herself on November 9th, the same day I was removed and Mr. Mackay was appointed by Attorney General Reno.

Senator SHELBY. What has happened, in your judgment, to the nine possible criminal misconduct referrals that you sent to the Little Rock office? What has subsequently happened to those nine?

Ms. LEWIS. They came into the possession of Mr. Fiske, as far as I know.

Senator SHELBY. Fiske was the first counsel that was appointed by the Attorney General; is that right?

Ms. LEWIS. That's correct.

Senator SHELBY. Go ahead.

Ms. LEWIS. Then, when he was subsequently removed on August 5th, last year——

Senator SHELBY. By Mr. Starr?

Ms. LEWIS. Replaced by Mr. Starr, that's correct. My understanding is the Independent Counsel's Office picked up those referrals and continued to work with them.

Senator SHELBY. Have some of the three guilty pleas and the pending three indictments, including the one for the sitting Governor of Arkansas, did some of these grow out of those nine referrals that your team sent down?

Ms. LEWIS. Yes, Senator, I have every reason to believe that they did.

Senator SHELBY. Have you, in your work as an investigator, ever had such interference by higher-ups in your investigation, or a similar investigation?

Ms. LEWIS. No, sir.

Senator SHELBY. Have you ever encountered anything like that before?

Ms. LEWIS. Never encountered it, and never seen anything quite like it.

Senator SHELBY. Did all the roads seem to you to lead right back to Washington?

Ms. LEWIS. A number of them did, yes, sir.

Senator SHELBY. Where did the other ones lead, to Little Rock?

Ms. LEWIS. Some of them led to Little Rock. Some of them dead-ended right there at the RTC.

Senator SHELBY. They dead-ended there. Were you ever confronted by anyone from the RTC's office or the Justice Department from Washington, DC regarding what you were doing and your team was doing in the investigation of Madison/Whitewater?

Ms. LEWIS. No, sir, not prior to the date when Mr. Iorio called a meeting and briefed Ms. Yanda. After that——

Senator SHELBY. What happened in that meeting? Go ahead and relate it again.

Ms. LEWIS. Mr. Iorio instructed me to brief Ms. Yanda on what was going on with criminal referrals.

Senator SHELBY. Who is this other person?

Ms. LEWIS. Julie Yanda is the Section Chief for the Professional Liability Section in Kansas City.

Senator SHELBY. Kansas City office?

Ms. LEWIS. Yes, sir.

Senator SHELBY. What happened there, did you brief her?

Ms. LEWIS. Yes, sir. At Mr. Iorio's instruction, I advised her of the referrals that were in process, who the basic targets were, and because of the visibility, who some of the peripheral players were.

Senator SHELBY. Did you relate who the targets were, possibly including as a witness at that time the President and his wife, Mrs. Clinton?

Ms. LEWIS. Yes, sir, we did discuss——

Senator SHELBY. Among others, including the Governor of Arkansas?

Ms. LEWIS. Yes, sir.

Senator SHELBY. And others?

Ms. LEWIS. That's correct.

Senator SHELBY. What was the reaction to that? Was it one of consternation?

Ms. LEWIS. Ms. Yanda seemed a little visibly taken aback during the meeting, and during that meeting also indicated that she was going to designate one person on her staff, attorney Phil Adams, to work with Mr. Iorio on the main topic of that meeting, which had actually been the Rose Law Firm.

Senator SHELBY. Were they going to take you off of the case?

Ms. LEWIS. Not to my knowledge, Senator.

Senator SHELBY. Go ahead. They were going to designate Phil Adams to work on that?

Ms. LEWIS. He was going to be the legal representative from the Professional Liability Section to work in conjunction with Investigations.

Senator SHELBY. All right.

Ms. LEWIS. After that, the investigation proceeded, but as it proceeded, issues began to come up and complaints began to come in from various attorneys that I was talking too much to the U.S. Attorney's Office, cooperating too much with the FBI. I was cut out of the communication group.

Senator SHELBY. How could you cooperate too much with the FBI or how could you talk too much to the U.S. Attorney's Office about an ongoing possible criminal investigation? How could you do too much? Maybe you couldn't do enough, but how could you do too much?

Ms. LEWIS. Evidently, it seemed like any level of communication I had with those folks in Little Rock at the FBI and U.S. Attorney's Office was too much for them, although it was a standard part of my job and had been for 2 years.

Senator SHELBY. Do you believe there was a wall put up there between your communications to them, to try to get through to the U.S. Attorney's Office in Little Rock and others?

Ms. LEWIS. I believe that was their intent, to try to disparage those communications, yes, sir.

Senator SHELBY. But you had never in your investigative work encountered anything like this before, had you?

Ms. LEWIS. No, sir. In fact, in my previous investigations, the U.S. Attorney's Office and FBI had welcomed me and encouraged my ongoing participation in other investigations.

Senator SHELBY. Mr. Iorio, you are a former FBI agent; is that correct?

Mr. IORIO. Yes, that's correct.

Senator SHELBY. Have you ever had anyone in an official capacity try to impede the investigation like what went on here at the Kansas City office?

Mr. IORIO. No, I had never had that happen before.

Senator SHELBY. You had never seen anything like it, had you?

Mr. IORIO. No.

Senator SHELBY. Where, in your judgment, did you think the roads led to on this as far as the thwarting of the investigation?

Mr. IORIO. I didn't know. It's something I commented on earlier this morning. Hindsight is always 20/20 and we had these occurrences, different things happening over a period of 4 or 5 months. If you look at them individually, it might not mean very much, but if you look at them all together, there was a definite pattern there. That pattern was that we weren't supposed to do any investigative work or do anything else on Madison.

Senator SHELBY. A pattern of conspiracy perhaps?

Mr. IORIO. A pattern of obstruction, let's say.

Senator SHELBY. Obstruction at least. Obstruction of justice?

Mr. IORIO. Yes.

Senator SHELBY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I yield to Senator Boxer.

Senator BOXER. Thank you very much. I'm going to make a couple of observations that don't require a response because they're just my opinion, and then I'm going to go to a whole new area that we haven't raised up until this point.

When you said—and I felt you said it from your heart, Ms. Lewis—that it was a cheap shot when a personal letter was put out here, and you didn't know that it was on that disk, I felt your indignation. Perhaps now, you will understand how April Breslaw might feel knowing that you secretly taped her.

The difference was Mr. Ben-Veniste put out one sentence and you taped her from beginning to end without her permission. So maybe for the future, in your life, you will think about that, you can recreate the feeling you had, that sinking feeling when that letter came out.

The second point I'd like to make here, it is not a crime in Missouri to tape someone without their knowledge. It is a crime in many other States. You could be serving time for what you did if you had done it in another State.

The CHAIRMAN. Now, wait——

Senator BOXER. If I might finish, Mr. Chairman. I said clearly it was not a crime, but I'm pointing out in other States it would have been a crime. I make that point because I think it is very important here.

Now, you made two strong statements, and I want to know if you still stand by them. One, you said from the beginning—and I'm paraphrasing; if you don't feel I'm paraphrasing correctly, please let me know—your involvement in Whitewater has caused you nothing but grief, and you abhor those in public life who unjustly enrich themselves at the public expense. You said that in your opening statement.

Do you agree with the thrust of those statements?

Ms. LEWIS. Yes, I do, Senator.

Senator BOXER. Ms. Lewis, did you often reflect on the seriousness of the investigation that you were engaged in? Did you realize that your investigation needed to be done very objectively because it could even affect a Presidential election or a President?

Ms. LEWIS. Yes, ma'am.

Senator BOXER. Ms. Lewis, did you ever attempt to make a profit from this investigation?

Ms. LEWIS. No, ma'am.

Senator BOXER. I'd like to put on the screen a letter that we have gotten from a company, a letter that was written by you, Ms. Lewis—and I'd like you to confirm it is, in fact, your letter—right in the middle of the investigation, actually November 22, 1993——

The CHAIRMAN. Can we get a copy, too?

Senator BOXER. Of course.

Are we handing a copy to Ms. Lewis? Do you have a copy of that in front of you, Ms. Lewis?

Ms. LEWIS. No, ma'am, I don't.

Senator BOND. Mr. Chairman, what does that have to do with the——

The CHAIRMAN. I have not even seen the letter.

Senator BOXER. I think that it will become very, very clear when it is read.

Senator BOND. —business that she has pursued? May I ask why that's relevant?

Senator BOXER. Because I believe that I can show with documented letters that this witness attempted to profit from her role, and I think that it is quite relevant and I would like to pursue this.

Senator BOND. Mr. Chairman, let us read these letters which have just been——

Senator BOXER. I intend to read them with you.

Now, Ms. Lewis has testified——

Senator BOND. Let me——

Senator BOXER. Mr. Chairman, do I have the time or do I not have the time?

Senator BOND. Mr. Chairman, would you rule whether this is even relevant?

The CHAIRMAN. Let me take a look at this. This is the first time I've seen this. We'll suspend the clock for the time being.

[Pause.]

I have permitted wide latitude, I'm going to continue to provide wide latitude, certainly to the Members, in particular. I will per-

mit, and I think you can raise this letter and Ms. Lewis can give her explanation as it relates to what she attempted to do. I would suggest that Senator Boxer proceed.

Senator BOXER. Thank you, Mr. Chairman.

The CHAIRMAN. I would ask one thing, though. It would seem to me, in fairness, you can raise any question you want in regards to it, I permit that, but I would suggest that the Senator not characterize the letter until she's given Ms. Lewis an opportunity to answer any questions she has in regard to how the letter came about, et cetera.

Senator BOXER. I will proceed in a way that I hope meets your approval, Mr. Chairman. I will try to be very fair because this witness has sworn to us and reiterated a moment ago that, from the beginning, Whitewater has caused her nothing but grief and she abhors those in public life who unjustly enrich themselves at the public's expense.

Now, this letter, as I read it, shows no sense of grief. "Hi Miles: In accordance with our conversation of Thursday, November 18, 1993"—and this is right around the time that you were removed from the criminal investigation, but you worked on the civil investigation and you had made the criminal referrals—you say, "enclosed is a sample copyrighted T-shirt for your review and consideration. If your company determines that this concept is suitable to your product lines, licensing is available. Similar copyrights as noted below."

I'm going to say a word I would not normally say, so I'll probably spell it out. "In addition to the 'Boys, I'm Taking Charge Here,' which is B-I-T-C-H, that's the concept"——

The CHAIRMAN. We've all heard it.

Senator BOXER. —"to which I'd affectionately referred to as the East Coast B-I-T-C-H, the following have also been copyrighted and are available, the Texas B, the California B and last but certainly not least, the Presidential B, which stands for 'Bill, I've taken charge. Hillary.' Having been a member of the National Association of Female Executives for several years"—I'm not going to read every word here but if you think I'm not being fair, I'll read every word—"they find this outrageously funny as well as reflective of their thinking and have urged me to market the idea through T-shirts, bumper stickers, coffee mugs, et cetera. My associates who are professional women in the good ol' boy States have pleaded for the opportunity to express their opinions with a Bubba T-shirt. The political concept was an outgrowth of the original idea and I suspect we will have a strong market given the current political climate"—now, I'm going to ask you about what you meant by "the current political climate"—and then you give out two phone numbers, your home and your work. I would ask you, do you give out the RTC phone number here?

Ms. LEWIS. Yes, ma'am, that was my office number.

Senator BOXER. So you gave your office number out to pursue an outside business; is that correct?

Ms. LEWIS. I gave him my office number so he could contact me during the day, if necessary.

Senator BOXER. To pursue this project; is that correct?

Ms. LEWIS. Yes.

Senator BOXER. So you gave out your office number, invited him to call there to pursue this business; is that correct?

Ms. LEWIS. Ms. Boxer, if you wish to characterize it that way, I'm not going to argue with you, but it's no different than receiving a personal call from my husband.

Senator BOXER. I disagree with you. It's completely different and against the rules to do that. I'm just ascertaining that this, in fact, was the work number.

Now, did you ever plan to sell shirts with the word B-I-T-C-H on them, referring to the President and Mrs. Clinton?

Ms. LEWIS. No, ma'am, that was not my intent. The original intent with this letter was just to get the "Boys, I'm taking charge here" concept rolling, which it did.

Senator BOXER. So this is not correct, this letter where you say "Bill, I've taken charge. Hillary" and "Bubba, I'm taking charge here" is an incorrect letter? Do we have the wrong copy?

Ms. LEWIS. No, it's not incorrect at all. What it says is they are available if someone is interested in them, but I was not actively pursuing anything other than the "Boys, I'm taking charge here" concept which I did subsequently speak to this gentleman about, and that is all they are marketing.

Senator BOXER. I would say, Mr. Chairman, if she was only putting that forward, then I don't understand why she has the Presidential B, which stands for "Bill, I've taken charge. Hillary" and "Bubba, I'm taking charge here," but I'll let that stand in the record. Anyone, I think, who reads this sees that you were pursuing that contrary to what you're saying.

I would ask you why you think people would buy such a shirt and wear it in public? Do you think this would be a good seller, the Presidential B-I-T-C-H, did you think that when you put it in a letter, that it would be a good seller?

Ms. LEWIS. Mrs. Clinton has been characterized as a very strong woman, Senator. I have been characterized for a number of years as a very strong woman as well, with an assertive personality, to the point where when this idea came up in 1987, I turned it into a liability rather than an asset. I have no objections—and forgive me, gentlemen—to somebody calling me a bitch, that's fine.

Senator BOXER. That isn't the point. You're an investigator and in the middle of this investigation, it was still going on——

The CHAIRMAN. She had been removed from the investigation at——

Senator BOXER. —for you to market a T-shirt which denigrates the President and the First Lady. Now, I also feel that you would profit from it, would you not? Wasn't that your intent, to profit from this T-shirt?

Ms. LEWIS. My intent was to profit from the T-shirt, "Boys, I'm taking charge here," as it was marketed. Second, I would like to address what you just said. This is in no way an attempt to denigrate the First Lady. Being a woman of basically the same ilk and person——

Senator BOXER. Now——

The CHAIRMAN. Let her finish, please, Senator. Go ahead.

Ms. LEWIS. I mean that as no disrespect to Mrs. Clinton at all. I have tremendous admiration for the fact that she is a strong woman, and this is not an insult.

Senator BOXER. You also respect the President because you say "Bubba, I'm taking charge here," is that why you wrote that one?

Ms. LEWIS. Until you said that, Mr. Clinton never factored into my thinking on Bubba. Bubba in Texas is a very common——

Senator BOXER. Only in "Bill, I've taken charge. Hillary." I suppose you meant Bill Clinton in that one; is that correct?

Ms. LEWIS. Yes, ma'am, that is correct.

Senator BOXER. What did you mean by, in this letter, "I suspect we'll have a strong market given the current political climate"? What did you mean by that?

Ms. LEWIS. The assessment that the First Lady is, in fact, a very strong, assertive woman.

Senator BOXER. I thought you said this had nothing to do with the First Lady, that this isn't what you were after, that, in fact, you were after the "Boys, I'm taking charge here"?

Ms. LEWIS. I was after "Boys, I'm taking charge here," Senator Boxer, but you asked me specifically about "Bill, I've taken charge. Hillary" and that's what the current political climate referred to, the First Lady as a very strong, assertive woman.

Senator SARBANES. Did you copyright "Bill, I've taken charge. Hillary," the Presidential bitch T-shirt? Did you copyright that?

Ms. LEWIS. I attempted to copyright all of them, Senator Sarbanes, but, unfortunately, copyrights cannot be given on text such as that.

Senator SARBANES. I see. But you sought to get a copyright on all of them?

Ms. LEWIS. Yes, sir, I did.

Senator SARBANES. Not just on "Boys, I'm taking charge here"; is that correct?

Ms. LEWIS. That's correct, yes.

Senator BOXER. I see my time is up. May I come back to this in my next round?

The CHAIRMAN. Certainly.

Senator BOXER. Thank you.

The CHAIRMAN. Senator Bond.

Senator BOND. Mr. Chairman, speaking of cheap shots, I think to go this far down the path on an unrelated business activity borders on that problem, but what I believe, if I recall, that Ms. Lewis was referring to in cheap shots is in the redacted portion of the letter, which was put up on the Elmo, this first statement, his ability to lie surpasses that of our most astute politicians.

As I understand that, that "his" had no reference to the President. It was referring to some other male; is that correct, Ms. Lewis?

Ms. LEWIS. Yes, sir, that was referring to my 14-year-old stepson.

Senator BOND. So, to the extent that was put on the Elmo as perhaps a reference to the President, that is inaccurate.

Now, let me go back and maybe I can bring Mr. Iorio into this because I'm a little confused as to what the PLS does. What precisely is the responsibility of the PLS? Could you tell us about that, Mr. Iorio?

Mr. IORIO. The Professional Liability Section of the Resolution Trust Corporation is to litigate directors, officers, accountants, appraisers, and attorneys for negligent acts that they did that caused the failure of the failed institution.

Senator BOND. Now, how does the criminal investigation, such as that undertaken by Ms. Lewis under your direction, of Madison Guaranty relate to the PLS? Do they take that work and then pass it on to others? How is there a relationship between Ms. Lewis' investigation, for example, and the PLS in this situation?

Mr. IORIO. Let me give you the situation where we have an ongoing criminal investigation, and we have an institution where we have ongoing civil claims. We would share information so that they would not be taken by surprise, if we were doing something on the criminal side that might impact what they were doing on the civil side.

However, in the Madison institution, all of the civil claims were closed and had been closed for a considerable period of time. So any impact we were going to have on them on the criminal side was not impactive on them because the civil claims had been closed.

Senator BOND. Let me get this straight. They were supposed to handle civil claims?

Mr. IORIO. Yes.

Senator BOND. I'm having a very difficult time finding out what business they had in the middle of the criminal prosecution. Can you help me understand why the PLS, I think the statement was they wanted to control the documents, was that the PLS wanted to control the documents out of Kansas City?

Mr. IORIO. It was on the subpoena compliance.

Senator BOND. On the subpoena, what business do they have on that subpoena?

Mr. IORIO. The procedures that were put into effect for Madison were entirely different from any other procedures we had had formerly. The fact that Madison was a closed institution, had never been assigned to Kansas City but had been handled out of Washington, DC, Senator, I wish I could answer it because I sure can't figure it out.

Senator BOND. So, all of a sudden, the PLS shows up as the great roadblock, the ultimate I'm here from Washington and I'm here to help you, this is the ultimate interference of the PLS in a procedure unheard of before, and inserts itself over your investigator and between your investigator and the U.S. Attorney?

Mr. IORIO. Between the U.S. Attorney and us and the FBI.

Senator BOND. Can you tell me in what other circumstances the PLS would interpose itself between criminal investigators and the FBI or the U.S. Attorney?

Mr. IORIO. There would be a reason for them to be involved if there was ongoing civil claims and we had criminal matters that could impact them, especially if we were seeking restitution money and a victim impact statement was being prepared, any of these things, but that's premised on the fact that you would have to have ongoing civil claims in the process, and we didn't have that.

Senator BOND. Do you know for a fact that there were no civil claims that the PLS was pursuing with respect to Madison Guaranty?

Mr. IORIO. Yes. There had been one recovery and the rest of the claims had been closed out, I want to say in early 1990.

Senator BOND. So they had been closed, and they showed up in an area where they would traditionally have had only the limited role of protecting their right to a civil recovery. Normally, I would think it would be the other way around, that you want to make sure the civil recovery does not interfere with a criminal prosecution which is a more commonplace problem.

In other words, the totally out-of-the-ordinary interposition of the PLS really not only astounds me, but I think it points out the unusual emphasis, concern being placed by somebody in Washington on this investigation. There's no precedent that you can cite us for having the PLS in this position?

Mr. IORIO. No.

Senator BOND. Let me ask you about something else, again, that really bothers me. Is there a standard procedure in the RTC for putting someone on administrative leave? Has this happened before outside of your case?

Mr. IORIO. At that time, I did not know there was any procedure. We were not familiar with administrative leave.

Senator BOND. It would seem to me if somebody is put on administrative leave, number one, you would expect at least that they would have the charges presented to them. Would that not make sense, as a lawyer and as an FBI——

Mr. IORIO. We would have liked to have known what the charges were against us.

Senator BOND. Number two, you would have liked to have had an opportunity to respond?

Mr. IORIO. Yes, and we, through our counsel, volunteered to make ourselves available for an interview to answer any questions that might be presented to us.

Senator BOND. Did they ever avail themselves to that opportunity?

Mr. IORIO. No.

Senator BOND. Then, just as mysteriously, after a 2-week vacation of administrative leave, you were told to go back and there was no indication as to why?

Mr. IORIO. No, we were just told to go back.

Senator BOND. You said that you only saw the memo from Mr. Hindes just this morning?

Mr. IORIO. Yes.

Senator BOND. It seems to me, again, the procedures being followed here are totally out of the ordinary and suggest that there was some influence at work within the RTC.

Let me ask, Ms. Lewis, on the disappearance of the first referral, the one that just disappeared in the bowels of Justice somewhere, how long was that one gone?

Ms. LEWIS. I understand that Mr. Banks sent it up there initially in October 1992, and it didn't resurface until June 1993, when it was found by my contact at the Justice Department who indicated that it was going to be sent back to Little Rock.

Senator BOND. Mr. Banks had indicated in that letter that he was being what we would say would be very politically sensitive and that he didn't want to deal with it, so nothing came of it. Ulti-

mately, obviously the witnesses listed in that referral, I believe, included Mr. Smith and Jim Guy Tucker; is that correct?

Ms. LEWIS. I believe so.

Senator BOND. So Mr. Banks may have been politically very cautious, but he made what was a bad judgment about the ability to follow up on the basic information, to expand upon that to develop adequate grounds to bring an indictment; is that fair to say?

Ms. LEWIS. That's fair, Senator Bond. I just didn't understand why it wasn't treated in a normal manner from the time that it left the RTC.

Senator BOND. Now, have you ever heard of a second referral being held up by the PLS?

Ms. LEWIS. No, sir, not that I can think of.

Senator BOND. Mr. Iorio.

Mr. IORIO. Since the change in procedures, I wouldn't say they're held up, but they're reviewed and their transmission takes a week, 10 days, 2 weeks longer than it did previously. It's part of the new procedure now.

Senator BOND. Thank you, Mr. Iorio.

Mr. Chairman, my time is up.

The CHAIRMAN. Thank you.

Senator Sarbanes.

Senator SARBANES. I'll go to Senator Boxer. I think she needs to continue her questioning.

Senator BOXER. Thank you very much.

Senator SARBANES. Mr. Iorio, let me ask you on that point, how long were these referrals reviewed by the PLS?

Mr. IORIO. Excuse me, how long were they—I want to say 8 or 9 working days.

Senator SARBANES. So that time of review is no different than what you're encountering now as part of the standard procedure; correct?

Mr. IORIO. Since the change in procedure, that's——

Senator SARBANES. When was the standard procedure put into effect?

Mr. IORIO. The policy was issued June 17, 1993, and the Madison referrals were the first referrals under the new procedure.

Senator SARBANES. The policy had been put into place on June 17th?

Mr. IORIO. That's when the policy was prepared in Washington and sent to the field. To the best of our recollection, going back and looking, it appears that the Madison referrals were the first referrals under the new procedure.

Senator SARBANES. The other referrals all now go through that procedure; correct?

Mr. IORIO. Yes.

Senator SARBANES. The time period usually for that review in those referrals is comparable to what took place in the Madison case; correct?

Mr. IORIO. Yes.

Senator SARBANES. Thank you.

Senator Boxer.

Senator BOXER. Thank you, Senator Sarbanes. Ms. Lewis was the one who appeared to be pushing the hardest on this case and

now we have something we can put up on the screen, which is a message that was given to, I believe it's FBI Agent Steven Irons, and it is a message that, as I understand it, Ms. Lewis requested be written out.

The CHAIRMAN. Senator, if I might ask, would you attempt to get to the Members those documents which we're going to be putting up, I'd appreciate that.

Senator BOXER. Right. Does the Chairman have that?

The CHAIRMAN. I don't. If we could have the number of the document?

Senator BOXER. It's OIC 001123. While you're looking at it, I'll make my preliminary comment.

This shows—if I might characterize it because I have a right to do that—a rather, shall we say strong desire to push this forward. This is a message to the FBI agent saying "have I turned into a local pariah just because I wrote one referral with high profile names, or do you plan on calling me back before Christmas, Steven," with the number.

Now, that is 1 week after the criminal referral, and the reason I think this is important, Mr. Chairman, is because I think motivation is key here. You have to look at these other things that others of my colleagues feel are irrelevant, and I'm going to pursue them.

My question is, Ms. Lewis, you were pushing hard for this to move forward, and then you enter into a new business. We have other letters back that we will put in the record from the T-shirt company, they're saying congratulations on making the right decision and going with us on this. We then have the further letter you wrote to them. So this is moving forward. We have a contract with your lawyers that references this as well. As a matter of fact, you plan to pay your lawyers with the proceeds out of this, so this is not something that you thought about lightly.

So, I ask you, don't you think that plans to make money from shirts with the logo the Presidential B-I-T-C-H, Hillary mentioned in it, could make it look at the very least that you had an axe to grind or that you were prejudiced against the Clintons?

Let's just talk about appearances. You have stated you were not. Do you feel there could be an appearance of this?

Ms. LEWIS. Only if one were looking hard to find it, Senator Boxer, because "Boys, I'm taking charge here" was an idea I came up with in 1987. I chose to market it in 1993, and I proceeded forward hoping that it would make a profit.

Senator BOXER. Yes, you certainly did, and you added another concept, which was "Bill, I've taken charge. Hillary." You also talk about a political climate.

Once again, would you tell us what you meant by "political climate"?

Ms. LEWIS. Yes, ma'am. I think that's because the First Lady was coming across as a very strong and assertive woman. There are a lot of women out there who do not take that particular comment as being an offense.

Senator BOXER. I would say to you that is not political climate. The fact that there is a strong First Lady in the White House has nothing to do with political climate. We're going to get some of the newspapers from that time and we're going to take a look at it

when I continue my questioning later because, to me, whether the First Lady is strong or weak, or whatever, is not a climate. It's about a person, not a political climate.

Now——

The CHAIRMAN. The Senator is right. She can make any comments she wants. We've allowed wide latitude. I have to tell you I don't understand that, but go ahead.

Senator BOXER. Don't you think it's highly questionable, Ms. Lewis, for you to be engaged in a criminal investigation, which you clearly were, even after you were taken off the criminal case you were on, in fact, the civil case? As a matter of fact, your conversation that you taped with Ms. Breslaw was after you were taken off the criminal case. Don't you think that it's questionable for you to be engaged in a criminal investigation and, at the same time, trying to make a profit from a political climate which your criminal investigation, in your own words—that I would correct—in the recollections of an FBI agent you said could change the course of history? Don't you think there's something that doesn't meet the smell test here?

Ms. LEWIS. No, Senator Boxer, I don't. The profit that I hope to gain off that was strictly based on the "Boys, I'm taking charge here" idea.

Senator BOXER. Which you keep repeating——

The CHAIRMAN. Would you let her answer the question, Senator.

Senator BOXER. Mr. Chairman——

The CHAIRMAN. Senator, I have permitted wide latitude. I think we've gone far afield, but it's your time. Let her answer the question. Go ahead.

Ms. LEWIS. Thank you, Mr. Chairman.

The profit that I have made, Senator Boxer, has only been from "Boys, I'm taking charge here." None of the rest of that stuff has been marketed. If the RTC, in fact, believed that there would have been some kind of a conflict there, I think I would have heard about it from the ethics people.

Senator BOXER. The fact is you filed a form with the Ethics Committee, did you not?

Ms. LEWIS. I did.

Senator BOXER. You did not explain at all what the slogans were on the shirts, did you?

Ms. LEWIS. I was not asked to explain.

Senator BOXER. When you file such a form, I'm sure you would understand, Ms. Lewis, that what you put on it in terms of your explanation is up to you, and I will put that in the record in my next round.

Let me just ask you this: Aren't you the one who sent the criminal referrals naming the Clintons as potential witnesses?

Ms. LEWIS. Yes.

Senator BOXER. Do you think that selling T-shirts with crude, mocking comments about two people within the orbit of your investigation, the President and the First Lady, is, at the minimum, an unwise thing to do?

Ms. LEWIS. First, you were referring to it as a crude and mocking comment and I do not see it that way. Second, you are trying to

tie it to my investigation, which it did not. It was an idea that came up significantly before that. May I finish, please?

Senator BOXER. Certainly.

Ms. LEWIS. Thank you. The "Bill, I've taken charge. Hillary" idea was one that came up much later——

Senator BOXER. If we could look at the record, let me give you some dates. You sent these criminal referrals—and correct me if I'm wrong—starting in September 1992, and there were other criminal referrals, and that was completed in October 1993. This letter was written in November 1993. This was right in the middle of everything.

If I might say, you can say it as many times as you wish and apparently you will, you put in here "Bill, I've taken charge. Hillary."

I might take issue as a human being, forget the Senator, I don't think that is a compliment. I think it is mocking, to put something like that out for any husband to have that said about him——

The CHAIRMAN. That should be the worst that's said about husbands.

Senator BOXER. Mr. Chairman, I'm not commenting on what your wife said about you because I don't know that, but I'm sure it was complimentary.

The CHAIRMAN. No, no.

Senator BOXER. My point is you have a person who has made two criminal referrals, has made a criminal referral which names the President and the First Lady, at the same time pursuing profit by—in my opinion and not in hers—I suppose she thinks it is a compliment issuing what she calls the Presidential B-I-T-C-H T-shirt. I think it's mocking. I think it's disrespectful at the minimum. I don't think it's particularly patriotic.

I certainly think if I was in the middle of an investigation where I knew, as you have stated, that you had to bend over backward given your own politics which you put out on the table as conservative Republican, and you kept it in the front of your mind through this investigation that you had to bend over backward to be fair, if you laid this on top of that, it doesn't smell right to this Senator and I think it is wrong. Clearly, you still stand by this.

Now, wouldn't you agree, since I have laid out my feelings, that it is possible that others might find that someone who is conducting an investigation shouldn't try to make a profit from it?

Ms. LEWIS. Ms. Boxer, with all due respect, you and I agree to disagree on that point because I do not find this to be demeaning. Second, you have consistently tried to tie this particular issue back to my investigation, when, in fact, there is no tie. That did not play into my intentions for this at all. Bill and Hillary was an idea that occurred to me and so I threw it in with the rest of the pile which had long since been growing, since 1987. There's no connection between the two.

Senator BOXER. Since my time is up, when I continue, I'm going to show you a contract with your lawyers that ties the two together directly.

The CHAIRMAN. I can't wait.

Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. I have to say that this has all been very interesting but it doesn't amount to a hill of beans.

The only question to be asked is, did you do your job? Mr. Iorio, you're a Democrat; right?

Mr. IORIO. Yes, sir.

Senator HATCH. Mr. Ausen is a Democrat; right?

Mr. IORIO. Yes, sir.

Senator HATCH. You were an associate of Ms. Lewis'; right?

Mr. IORIO. Yes.

Senator HATCH. You saw her work?

Mr. IORIO. Yes.

Senator HATCH. You approved of it?

Mr. IORIO. Work product was fine.

Senator HATCH. Work product was fine. She did her job; right?

Mr. IORIO. Yes, she did.

Senator HATCH. She did it right?

Mr. IORIO. Yes.

Senator HATCH. She did what she was hired to do?

Mr. IORIO. Yes.

Senator HATCH. Do you think there were any politics involved in what she did?

Mr. IORIO. I don't think so.

Senator HATCH. Were there any politics involved in what you or Mr. Ausen did, or any of the others around there?

Mr. IORIO. We did what we were hired to——

Senator HATCH. You were trying to solve these problems.

Mr. IORIO. Yes, sir.

Senator HATCH. You were doing what you were hired to do. Are you proud of the work she did?

Mr. IORIO. I think she did very good work.

Senator HATCH. Then what's all this other stuff about? I mean, whether we like you or not, Ms. Lewis—and I happen to like you, I think you're a strong, assertive woman, and I think that's great—whether we like you or not, that's irrelevant. The question is, did you do your job, and you did.

Let me just go through that for a minute or two. It has been suggested here that you might have some animosities toward the Clintons. I know Democrats sitting in the Senate who do. We all do. I know a lot of other people who do too, rightly or wrongly. The fact of the matter is you might have had some kind of vendetta against them.

Isn't it true that not all of your criminal referrals resulted in indictments; is that right?

Ms. LEWIS. That's absolutely correct, Senator.

Senator HATCH. At least not yet; is that right?

Ms. LEWIS. That's right.

Senator HATCH. OK. Now, isn't it unusual that every criminal referral would result in an indictment? I mean, it isn't the usual case, is it?

Ms. LEWIS. No, sir, but I've been fortunate in that respect.

Senator HATCH. Nevertheless, isn't it true that your work has been largely vindicated by the indictments brought by the Independent Counsel?

Ms. LEWIS. Yes, sir.

Senator HATCH. Wouldn't you agree with that, Mr. Iorio——

Mr. IORIO. Yes, I would.

Senator HATCH. —as a Democrat?

Mr. IORIO. Yes, I would.

Senator HATCH. I would like to talk about these referrals for just a minute. I think it's important to observe the actual results of your work because that's what is at issue here, not whether you wrote some T-shirt or whether you wrote a letter 20 pages long that's filled with humor and all of a sudden they pick out one part of it. Anybody can pick that out, find fault with it, and try to smear you with it. I personally resent it.

For example, in your referral number 730 CRO 190, didn't you find that James McDougal and Jim Guy Tucker may have violated Federal laws, specifically 18 U.S.C. section 2, aiding and abetting; section 657, misapplication of funds; section 371, conspiracy; and section 1007, false statements by misusing about half of the loan for $260,000 made by Madison Guaranty to Governor Tucker for the purpose of purchasing property? Isn't that what happened?

Ms. LEWIS. That is exactly what happened, Senator.

Senator HATCH. You suspected that Governor Tucker used those funds to pay off unrelated debts, did you not?

Ms. LEWIS. Yes, I did.

Senator HATCH. Isn't it true that the Grand Jury's August 17, 1995 indictment of Tucker and McDougal sought by the Independent Counsel specifically charged them with virtually the same violations of Federal law for misuse of the exact same loan?

Ms. LEWIS. Yes, sir.

Senator HATCH. In a different referral, number 730 CRO 198, you found that McDougal and Governor Tucker may have committed even more violations of Federal law, specifically 18 U.S.C. section 657, misapplication of funds; section 371, conspiracy; and section 1007, false statements by engaging in a "land flip," which I understand occurs when co-conspirators nominally sell property at an inflated price in order to generate false profits. That's what you found?

Ms. LEWIS. Yes, sir.

Senator HATCH. Isn't it true that the Grand Jury's August 17, 1995 indictment of Tucker and McDougal specifically charged them with the same violations of Federal law for exactly the same conduct?

Ms. LEWIS. Yes, sir.

Senator HATCH. RTC criminal referral number 730 CRO 199 also provided a significant basis for many of the counts contained in the August 17th indictment, didn't it?

Ms. LEWIS. Yes, it did.

Senator HATCH. Specifically, the referral identified Mr. McDougal as a suspect, along with several of his business associates, and Madison Guaranty insider Larry Kuca; right?

Ms. LEWIS. Correct.

Senator HATCH. The referral states that "Mr. McDougal and his associates committed the crimes of conspiracy, aiding and abetting, misapplication of funds and false statements"; right?

Ms. LEWIS. Yes, sir.

Senator HATCH. Isn't it true that the August 17th indictment charges Mr. McDougal and Mr. Kuca with mail fraud, false entry, and false statements to a financial institution?

Ms. LEWIS. It charges Mr. McDougal, Senator Hatch, but I believe Mr. Kuca had previously pled guilty.

Senator HATCH. He was charged in that very same indictment, I believe. It's OK. He pled guilty to it anyway?

Ms. LEWIS. Yes, he did.

Senator HATCH. I'll make that point, Mr. Kuca did plead guilty to those counts or those charges?

Ms. LEWIS. Yes, sir, he has entered a guilty plea.

Senator HATCH. Didn't your referral lead to further investigations?

Ms. LEWIS. I believe it did.

Senator HATCH. Isn't it true that the RTC's Criminal Investigation Unit tracked the flow of funds from ill-gotten loan proceeds through the McDougals' account?

Ms. LEWIS. Yes.

Senator HATCH. Didn't the RTC Criminal Investigation Unit's work substantiate the fact that the loan proceeds were not used for the previously stated purposes?

Ms. LEWIS. Yes, sir, and that information was passed on to Assistant U.S. Attorney Fletcher Jackson who was then involved in the David Hale investigation.

Senator HATCH. Didn't your referrals also lead to the indictments of both James and Susan McDougal on counts of mail fraud, conspiracy, wire fraud, false entry, and false statements to a financial institution?

Ms. LEWIS. Yes, sir, I believe they did.

Senator HATCH. That is far from a politically motivated investigation, then. I think it is safe to say that the quality of your work, whether you're a Republican or Democrat, whether you're a conservative or liberal, whether you want to sell T-shirts or not, has been fully vindicated.

Not all of your referrals have led to indictments yet; right?

Ms. LEWIS. Correct.

Senator HATCH. But a goodly number have?

Ms. LEWIS. Yes, sir.

Senator HATCH. That's based upon the work that you did. I mean, a Grand Jury eventually indicted McDougal and Tucker on charges you referred. In fact, isn't it true that 12 of the indictments, 21 counts, stem from the work you and your colleagues did?

Ms. LEWIS. Yes, I believe——

Senator HATCH. Is that true, Mr. Iorio?

Mr. IORIO. That is true.

Senator HATCH. You're proud of that, aren't you?

Mr. IORIO. Yes, sir.

Senator HATCH. That's what you're there for? That's what she was there for?

Mr. IORIO. Yes, sir.

Senator HATCH. Two weeks after you were removed from the Madison investigation, you received a special achievement award for your role in the Madison investigation, didn't you?

Ms. LEWIS. I did.

Senator HATCH. That seems like a pretty good record to me. I can understand how, after you had done such intensive quality investigatory work, you must have wondered what happened to your referrals and how, after a year and a half of seeing the first referral bounced around and ignored, you contacted Chairman Leach because you may have thought these referrals were also being obstructed. I can see that. I think anybody can see that. I think anybody ought to see that. Anybody that doesn't is either stupid or just plain not interested in what's going on here.

Now, it's important for the proper functioning of our Government that public servants like yourself come forward to report things like that to Congress so that we can perform our Constitutional duty to oversee the operations of the Executive Branch. It's important that you do that. It's called whistleblowing. It's something that people get chewed up for doing, but something that saves taxpayers billions of dollars in the end.

After hearing your story, though, I, as Chairman of the Judiciary Committee, have many questions about the way this case was handled by the Department of Justice. I'm very concerned about it and, believe me, I intend to pursue those questions. This really bothers me.

I think the bottom line is, whether Ms. Lewis liked or hated the Clintons, whether any observer likes or dislikes Ms. Lewis—I happen to like her—the 20-page letter that refers to the President, the T-shirts, all the other axe-to-grind implications made by some of our friends on the other side are all irrelevant to the fact that you, Ms. Lewis, were doing your job and you did it well.

You did it in cooperation with others who may or may not have shared your political affiliation or your political views, and you did it with the respect of your fellow people, people that you work with, and you were taken off the case for no good reason because that has not been explained as of this date; right?

Ms. LEWIS. That's correct. Thank you very much, Senator Hatch.

Mr. CHERTOFF. Is that right, Mr. Iorio, it hasn't been explained yet, why you folks were taken off the case?

Mr. IORIO. That's correct.

Senator HATCH. Not by anybody?

Mr. IORIO. No one.

Senator HATCH. Where is the explanation? Where are the implications from that? That is a lot more important than what kind of a T-shirt it may have been from which you may have wanted to make royalties. Those are the things that bother anybody who really looks at what happened.

I had somebody in a meeting come up to me and say the whole story is going to be that she was prejudiced. How can that be? So many of the things that you did were right and have led to these indictments and at least three guilty pleas.

I think we ought to get off the axe-to-grind stories and start talking about what happened here and if there's no problem or responsibility, let's admit it and go on. Right now, it looks pretty doggone bad to me.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Sarbanes.

Senator SARBANES. Mr. Iorio, were you aware of the fact that on the first referral—that's the only one I want to pinpoint now—the one made on August 31, 1992, there were very serious questions raised about that referral up the line by the FBI, the U.S. Attorney and the Department of Justice?

Mr. IORIO. No, I was not.

Senator SARBANES. You were not. You did not know that, for instance, on September 23, 1992, Don Pettus, the career FBI official, former special agent in charge of the Little Rock office, met with the U.S. Attorney to discuss this referral and that he reported to the FBI that it was also the opinion of the U.S. Attorney that the alleged involvement of the Clintons and the wrongdoing was implausible and he was not inclined to authorize an investigation or render a positive prosecutive opinion, that no one disagreed with that assessment, that later it is indeed the opinion of the Little Rock FBI and the U.S. Attorney and the First Assistant of the Eastern District of Arkansas that there is indeed insufficient evidence to suggest the Clintons had knowledge of the check kiting activity conducted by McDougal or Anspaugh?

Mr. IORIO. Not until I saw that information today. I did not know that.

Senator SARBANES. You did not know that?

Mr. IORIO. No.

Senator SARBANES. Did you know that, Ms. Lewis?

Ms. LEWIS. No, Senator, I did not.

Senator SARBANES. Did you know the position of Charles Banks, the U.S. Attorney for the District of Arkansas, that was read into the record here earlier in the hearing in which he expressed his serious reservations about the prosecution by stating:

> My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses.

He then went on later to say:

> While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming Presidential election.

This is quoted from the letter to the FBI special agent in charge sent from Charles Banks, the U.S. Attorney. It continues with him saying:

> You and I know in investigations of this type, the first steps, such as issuance of Grand Jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions.

Did either of you have any understanding that that was the view of Banks, the U.S. Attorney in Arkansas?

Mr. IORIO. No.

Senator SARBANES. When did Banks become the U.S. Attorney, do either of you know?

Ms. LEWIS. No, sir. Mr. Banks was there when I arrived at the RTC in July 1991. I don't know when he was appointed.

Senator SARBANES. I believe he was nominated by President Bush, not President Reagan. None of you knew that he had these very serious questions about this referral; is that correct?

Mr. IORIO. That's correct.

Senator SARBANES. Ms. Lewis.

Ms. LEWIS. That's correct.

Senator SARBANES. Now, did you know that on review by the Department of Justice career officials with respect tc this first referral, the one that was made just 2 months and 3 days before the 1992 election, that a staff attorney at the Department of Justice, Mark McDowell, who prepared a memo after reviewing this referral, which had come up to Justice, said, "No factual claims can be found in the referral to support the designation of Mr. and Mrs. Clinton as witnesses." Then McDowell, who is, I guess, a 25-year career official in the Department of Justice, in deposition said he agreed in substance with McDougal's analysis:

> It didn't appear to me after reading the referral and especially after reading Mark's memo based on his expertise that it was a referral that had much potential. It seemed that this referral had come in half-baked. There was no reason for a more thorough investigation not to have been done. There was no reason to go after someone that the Government had already brought a presumably strong case against and lost. Yes, it looked like a junky case, that if it had any merit, the RTC should have fleshed it out or didn't have any merit and they should go on to more productive things.

Now, I'm not talking about the other referrals, the 1993 referrals. That was after the election. I'm talking about the 1992 referral, the single referral made on August 31, 1992. This is what was being said about this referral as it was reviewed up the line. You were not aware of that?

Mr. IORIO. No, Senator, but if they felt like that, why didn't somebody issue a declination and put it to bed?

Senator SARBANES. Eventually a declination was issued. I gather there——

Mr. IORIO. Fourteen months later.

Senator SARBANES. I gather there was a problem that this thing got lost in the Department—someone was transferred to Florida and it got lost in the Fraud Section of the Department of Justice, as I understand it. That's the explanation we've received from career people in the Department, and that occurred sometime in 1993. The fact of the matter is that when this referral was being reviewed up the line, the first referral, the one 2 months and 3 days before the election, the one that Ms. Lewis was very concerned about getting a determination on, these are the judgments that were being passed on it by the FBI, by the U.S. Attorney and by career officials in the Department of Justice. Now, that obviously is significant, it seems to me.

I mean, you've heard—I've just read you what these people said about this referral. In fact, some referrals that you send up get declined, a fair number of them, do they not?

Mr. IORIO. Yes, a sizable proportion.

Senator SARBANES. A sizable proportion do?

Mr. IORIO. Yes.

Mr. GIUFFRA. This one was being—we have the career person saying it looked like "a junky case," "half-baked"——

Mr. FORSHEY. Senator, Ms. Lewis is having chest pains, I apologize.

The CHAIRMAN. We are going to take a 15-minute break. The Senator's time is all but expired.

We stand in recess.

[Recess.]

The CHAIRMAN. I am going to call the Committee to order. We have sent for a doctor for Ms. Lewis. At this point in time we are going to stand in recess until 10 a.m. tomorrow morning. It is my intent to start with the first panel and if Ms. Lewis medically can proceed, we will proceed.

Mr. Iorio, I don't know, I would ask you to hold yourself available for tomorrow if you can. Will you be in town?

Mr. IORIO. Yes, I will.

The CHAIRMAN. All right. So in the event that there are any further questions that we might need to address to you——

Senator SARBANES. Mr. Chairman, I think I ought to note, so people just know, that Ms. Lewis was able to make her way out of the room under her own steam, so to speak, and is resting in the back room. We hope, though, she'll be carefully checked out.

The CHAIRMAN. Yes, a doctor is on his way. I don't know if he's here yet. He is here. OK. So she's being attended to at the present time. Counsel indicates that she has not been feeling well. She has a medical condition. I am not going to go into what it is. I think the length of time, et cetera, has just aggravated that. So we hope she will be able to return tomorrow and wew will finish up with the questioning, if we possibly can, with her tomorrow. That being approved, obviously, by her doctor. We stand in recess until 10 a.m. tomorrow morning.

[Whereupon, at 4:45 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Thursday, November 30, 1995.]

[Prepared statements and appendix supplied for the record follows:]

PREPARED STATEMENT OF L. JEAN LEWIS

FORMER SENIOR CRIMINAL INVESTIGATOR, KANSAS CITY, MISSOURI OFFICE, RTC

NOVEMBER 29, 1995

Mr. Chairman, distinguished Members of the Committee, my name is Jean Lewis. Until September 29, 1995, I was a Senior Criminal Investigator with the Kansas City, Missouri office of the Resolution Trust Corporation (RTC).

As you know, this is not the first time I have testified about the failure of Madison Guaranty Savings and Loan Association. I provided information and testimony to the Independent Counsel. I was interviewed for 2 days by staff working for the House Banking Committee. Subsequently I testified for 2 days before that Committee. And I was deposed for 2 days by staff reporting to this Senate Committee prior to appearing here today.

Let me begin my testimony by stating that only by a fluke of history do I find myself at the center of what is now known as the Madison/Whitewater matter. I did not ask to be the lead RTC criminal investigator in this case. It was assigned to me. And this investigation, along with the publicity now surrounding it, have caused me nothing but personal and professional grief. It has adversely affected both my health and my career.

When I investigated financial institutions in Arkansas, including Madison, which culminated in the production of 10 criminal referrals, I was doing my job. As I said in my opening statement to the House Banking Committee:

> Never did I expect a routine investigation of a failed savings and loan in Arkansas to come to this. But as a public servant, working on behalf of the depositors and taxpayers of this country, it is my job to follow the evidence wherever it leads. The public must have faith in their Government institutions. Those who place their savings in banks and savings and loans across the Nation expect their money to be safe. When powerful people, including high officials, violate their public trust to enrich themselves, they not only break the law but they betray the American people.

During the investigation of Madison, we uncovered rampant bank fraud, including check kiting, resulting in our submission of 10 criminal referrals to the U.S. Attorney in Little Rock, Arkansas and the FBI. For those who don't know, a criminal referral is a formal written statement to the U.S. Attorney and the FBI summarizing the evidence of suspected criminal conduct and the criminal laws which may have been violated; it also identifies the persons suspected of criminal conduct, as well as those believed to have witnessed or benefited from that conduct. To date, the Independent Counsel's investigation of Madison—launched by these criminal referrals—has resulted in numerous guilty pleas and indictments. Furthermore, I believe there was a concerted effort to obstruct, hamper and manipulate the results of our investigation of Madison.

The Madison/Whitewater Investigation

The RTC's criminal investigation of Madison began after the *New York Times* published an article Sunday, March 8, 1992, alleging that Madison funds had been diverted for the benefit of Whitewater Development Corporation (Whitewater), a real estate venture whose partners were James and Susan McDougal, and Bill and Hillary Clinton. The article further alleged that these actions may have caused a financial loss to Madison.

At the time the *New York Times* article appeared, the RTC's Criminal Investigation Unit in Tulsa, Oklahoma was responsible for investigating criminal allegations involving failed savings institutions in Arkansas, among other places. The Tulsa office received two requests to determine whether Whitewater had, in fact, caused a loss to Madison. The initial request was from RTC Regional Investigations staff in Kansas City, Missouri based on inquiries from a since-deceased senior investigative specialist. The second request came from the director of the Tulsa RTC office.

Investigator Wyatt Adams, who had implemented a 1991 civil investigation of Madison, was asked to provide the initial response. RTC staff in Kansas City and Washington were preliminarily advised that Madison had made no loans to Whitewater, or the Clintons, although the McDougals had borrowed heavily from Madison and defaulted on several loans. Tulsa RTC investigators were instructed by senior regional investigative staff in Kansas City to continue reviewing Madison records that were kept in a Little Rock warehouse.

The First Criminal Referral: Number C0004

In March 1992, my involvement in the investigation began as a result of Mr. Adams discovering that a former Madison employee, Patricia Heritage, had admit-

ted fabricating Madison board minutes at the direction of its former president, John Latham. Ms. Heritage, who received her law degree after leaving Madison, was later hired by the Rose Law Firm. Since she was acting as counsel to the RTC in litigation involving other Arkansas and Oklahoma thrifts, I was instructed to review records provided by Mr. Adams and meet with the FBI to determine whether criminal action had been considered, or taken, against her. I learned no such action had been considered because Ms. Heritage had been acting at the direction of Madison's former president.

In April 1992, I then joined Mr. Adams in reviewing the Madison records stored in a downtown Little Rock warehouse, where he had already discovered Madison checking accounts in the name of Jim and Susan McDougal and Whitewater. As a standard investigative procedure, we began tracking the flow of funds through the two accounts, which led to several additional Madison checking accounts. The flow of funds among accounts revealed an elaborate check kiting scheme floating worthless checks among specific accounts intended to create the appearance of legitimate balances. This particular scheme of kiting transactions included the accounts of Flowerwood Farms, Tucker-Smith-McDougal, Smith-Tucker-McDougal, Madison Marketing, the McDougals' personal checking account, and Whitewater. Jim Guy Tucker was a business partner of Jim McDougal's and later became Lieutenant Governor and then Governor of Arkansas. Stephen Smith was a business partner of both Mr. Tucker and Mr. McDougal and a former aide to Governor Clinton.

Many of the checks we traced had the word "loan" written on them, but the checking accounts did not generally maintain sufficient funds to cover the so-called loans. A substantial number of the checks written between these and other McDougal-controlled companies frequently created a series of false deposits that simply gave the appearance of available funds. The money paid from these accounts included various real estate and loan payments to, among others, the Bank of Cherry Valley and Madison Bank and Trust. The scheme also provided money to Jim McDougal, Chris Wade, Larry Kuca and the Bill Clinton Political Committee Fund.[1] Chris Wade was a real estate developer who marketed the Whitewater property for the McDougals and the Clintons.

Also, from time to time, outside funds were deposited into one account and then systematically deposited to other McDougal-controlled accounts. Those outside funds came from Madison, Stephens Security Bank and David Hale's Capital Management Services.

In early August 1992, having collected substantial evidence of bank fraud, it was then necessary to prepare a criminal referral that would summarize the evidence and findings uncovered, and provide that information to the Justice Department, specifically the U.S. Attorney's Office in Little Rock and the FBI.

However, the RTC's Tulsa field office, where I worked, was closed in July 1992 and several of its functions, including the Investigation Unit, were merged with the Kansas City Regional office. RTC investigation management offered, and I accepted, a transfer to the Kansas City office. This reorganization caused a 6-week delay in the final review and completion of the first Madison criminal referral. (I say first Madison criminal referral because several additional criminal referrals were to follow.)

The first Madison criminal referral, which was assigned the number C0004, was supported by substantial detail and extensive exhibits. It was completed on August 31, 1992 and submitted to the FBI and U.S. Attorney by Kansas City RTC senior management in the Investigation Unit on September 2, 1992 in full compliance with RTC procedures and guidelines.

Among other things, the referral provided specific check numbers, dates, account names, account balances, particular uses of funds, and the names of individuals and entities involved in various check kiting schemes. The referral also stated that among those who stood to benefit from this activity were Stephen Smith, Jim Guy Tucker, then-Governor Bill Clinton and Mrs. Clinton inasmuch as "[t]he overdrafts and 'loan' transactions, or alleged check 'swapping' and kiting, between the combined companies' accounts ensured that loan payments and other corporate obligations were met, thus clearly benefiting the principals of each entity."

Very specific information was provided in this first referral. For instance, it states, in part, the following:

> During the target timeframe, Whitewater Development wrote a minimum of 10 checks, totaling $70,639.41. Of these 10 checks, five checks totaling $60,625 were

[1] The documents show contributions were made payable to Bill Clinton individually and the Bill Clinton Campaign Fund and then deposited to the Bill Clinton Political Committee account at the Bank of Cherry Valley.

written on insufficient funds. The ensuing overdrafts were covered by funds from the other combined companies, some of which were provided by bank loans. Some of the Whitewater checks with more significant dollar amounts, such as check #118 for $7,500, and #128 for $5,071.23, were payable to the Bank of Cherry Valley for principal and interest on two separate loans, and were written on insufficient funds. Check #118 was force paid, overdrawing Whitewater's account by $<7,492.04>, where the balance remained until check #152 from Tucker-Smith-McDougal for $7,500 was deposited into Whitewater's account. The circumstances surrounding Whitewater check #128 were similar, only the deposit came from the combined accounts of Rolling Manor, Tucker-Smith-McDougal, Flowerwood Farms and Pembrook Manor. . . .

Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this timeframe, check #137 for $25,000, payable to Ozarks Realty Co.,[2] and check #138 for $30,000, payable to James McDougal (alleged "loan repayment"—although the records show no indication of any loan from McDougal to Whitewater) were both forced paid as there were insufficient funds in the account to cover either check. When the $25,000 check paid, placing the balance at $<24,470.90>, the overdraft was covered by a check from Flowerwood Farms for $24,455.90 (the amount of the overdraft, less the $15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a $135,000 cashiers check drawn on Stephens Security Bank, Stephens, Arkansas.[3] The $30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of $270.13. When the check was force paid, the balance went to $<29,744.87>, where it remained for 2 weeks until a $30,000 check from Madison Financial Corporation (subsidiary of MGS&L) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even "loaned") Whitewater Development $30,000.[4]

Previously submitted referrals involving Arkansas institutions had consistently resulted in letters of acknowledgment from the FBI. By late December 1992, the Investigation Unit had not received an acknowledgment on the Madison referral. In order to follow up, I contacted the Little Rock FBI. Shortly thereafter, the Investigation Unit received a brief letter from the FBI acknowledging receipt of the referral and directing further inquiries to the U.S. Attorney's Office in Little Rock. The letter made no reference to the disposition of the referral and, at Mr. Iorio's recommendation, I placed the matter in my pending file for later followup. At the same time, I recommended that my supervisors consider further investigation into the fraud at Madison because of the magnitude of the fraud.

In May 1993, the Madison investigation continued with Mr. Iorio's and Mr. Ausen's decision to pool the investigative resources as this was the most effective means of addressing the indiscriminate level of fraud at the thrift. As lead investigator, I was asked by Mr. Ausen to coordinate the team effort.

The "Lost" Referral

In May 1993, I also made a verbal inquiry to the U.S. Attorney's Office in Little Rock regarding the referral. I was told it was not in their computer system, so I sent a written inquiry to Acting U.S. Attorney Richard Pence. His response letter indicated he was unaware of the referral's status and suggested I contact the Executive Office for U.S. Attorneys at the Justice Department in Washington, DC. His letter further stated that former U.S. Attorney Charles Banks had forwarded the referral to the Justice Department in Washington sometime in October 1992, having concluded that further prosecution of Madison matters would present a conflict of interest for his office.

On May 13, 1993, nearly 9 months after this first referral had been sent to the U.S. Attorney's Office in Little Rock and the FBI, I contacted the Justice Department, specifically the Executive Office for U.S. Attorneys. This began a 5-month odyssey of telephone calls that were required to determine the final status of C0004.

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[2] Ozarks Realty Co. was owned by Chris Wade, who also marketed Whitewater lots. He recently pled guilty to bank fraud as a result of the ongoing Independent Counsel investigation.

[3] I would also point out to the Committee that the $135,000 Stephens Security Bank loan was paid off with funds from the $300,000 Capital Management loan to the McDougals' Master Marketing Company in 1986.

[4] We ultimately learned that it was this check that was disguised on Madison's books as an engineering survey payment to Whitewater. This payment was a topic raised by April Breslaw, senior RTC Washington attorney, in our February 2, 1994 conversation.

My initial contact at the Justice Department recalled the referral had been submitted as a special report for the attention of Attorney General William Barr. Further efforts tracked the referral through seven different offices at the Justice Department. The referral was finally located in the Fraud Section of the Justice Department's Criminal Division in late June 1993, and was returned to the Executive Office for U.S. Attorneys for review.

On June 23, 1993, I learned the referral would be returned to the U.S. Attorney in Little Rock. This was based on an internal Justice Department memorandum stating that there was no basis for recusal of the U.S. Attorney and no apparent conflict of interest. Nine days later I learned the referral had arrived back in Little Rock, but that the Acting U.S. Attorney intended to "let it sit" until the new U.S. Attorney-designee, Paula Casey, took office. Ms. Casey was sworn into office as U.S. Attorney the second week in October 1993. On October 27, 1993, more than a year after its submission, Ms. Casey declined RTC criminal referral number C0004. In other words, Ms. Casey refused to further investigate the matters raised in the referral. On November 9, 1993, 13 days after rejecting the referral, Ms. Casey recused herself from the case. If there was a conflict requiring her to recuse on November 9, 1993, then it would seem there was a conflict when she declined the referral a few days earlier.

Nonetheless, rather than investigating further, Ms. Casey rejected the referral stating there was "insufficient information to sustain many of the allegations." But Ms. Casey did have additional information, namely, nine new criminal referrals submitted to her on October 8, 1993. However, Ms. Casey stated she was concurring with the opinion of Justice Department attorneys in Washington who had concluded this matter prior to her coming to the U.S. Attorney's Office in Little Rock. But her rejection was in direct conflict with information I had received from the Justice Department in Washington, and the U.S. Attorney's Office, when the referral was returned to Little Rock 4 months earlier.

Nine Additional Referrals

Between May 1993 and August 1993, the Madison criminal investigative team reviewed and researched several transactions involving insider abuse, self-dealing, money laundering, embezzlement, diversion of loan proceeds, payments of excessive commissions, misappropriation of funds, land flips, inflated appraisals, falsification of loan records and board minutes, chronic overdraft status of various subsidiaries, joint ventures and real estate investments, regulatory violations of investments in subsidiaries, wire fraud, and illegal campaign contributions.

As a result of this investigation, nine additional referrals were prepared alleging criminal violations of several sections of the United States Code relating to bank fraud, conspiracy, false statements, false documents, wire fraud, aiding and abetting, and misuse of position.

These nine referrals identified multiple suspects, including the Bill Clinton Political Committee Fund, James and Susan McDougal, Jim Guy Tucker, Chris Wade, and several former Madison officers and borrowers. As I will discuss later in my testimony, James B. and Susan H. McDougal and Jim Guy Tucker have been indicted and Chris Wade has entered a guilty plea.

Suspects on some of the referrals overlapped as witnesses on others, reflecting the elaborate nature of Madison's relationships with some of its borrowers. Jim Guy Tucker and former Madison director Charles Peacock, III were among those who fell into this category.

The referrals also identified additional witnesses with potential knowledge of the alleged criminal violations. Those witnesses included Mr. and Mrs. Clinton, Beverly Bassett-Schaffer and John Selig, of Little Rock's Mitchell Selig Tucker law firm,[5] Stephen Smith, Larry Kuca, and others.

Again, these referrals provided significant detail. For instance, criminal referral number 730CR0196 states, in part, that:

> Prior to funding $38,940 of the $50,000 loan proceeds to Quapaw Title Company on April 5, 1985, Peacock allegedly diverted $6,000 from the proceeds to purchase two cashier's checks on April 4, 1985; check numbers Q2497 and Q2498, drawn on MGS&L account #7001312. Each check was in the amount of $3,000, each was purchased in the name of either a Peacock relative or business associate, and each was payable to Bill Clinton, individually rather than the Bill Clinton Political Committee. These two checks were subsequently deposited to the Bill Clinton Po-

[5] Ms. Schaffer and Mr. Selig were law partners of Jim Guy Tucker at Little Rock's Mitchell Selig Tucker law firm. Mr. Selig also acted as general counsel to Madison. Ms. Schaffer later was appointed by Governor Clinton to be Arkansas State Securities Commissioner, whose office regulated State savings and loans.

litical Committee account (#81–313) at the Bank of Cherry Valley, Cherry Valley, Arkansas.

On the same day, Flowerwood Farms, Inc., an entity owned and operated by James B. and Susan H. McDougal, issued check #000192 to Madison Guaranty for $3,000; this referral re-incorporates the allegation contained in previously submitted RTC criminal referral number C0004, that these funds were used to procure MGS&L cashier's check #Q2496 for $3,000, purchased in the name of former Senator J.W. Fulbright and payable to the Bill Clinton Campaign Fund. According to information obtained from an interview with James B. McDougal, conducted by former Special Investigative Counsel Jeff Gerrish of the Memphis law firm Borod & Huggins, hired by the MGS&L Board of Directors in late 1986 to investigate the McDougal's activities at the thrift, McDougal admitted that he had been "signing documents" for Senator Fulbright "for 20 years," lending a strong degree of probability that the cashier's check in question was in fact purchased by McDougal and obtained in conjunction with the two checks from Peacock, as evidenced by the sequential order of the checks (#Q2496, 2497, 2498 and 2499). It should be noted that the signature on the Flowerwood Farms check is allegedly that of Susan McDougal. However, it bears no resemblance to Ms. McDougal's signature as it appears on numerous other MGS&L documents.

In addition, check #688 for $3,000 payable to the Bill Clinton Campaign Fund was issued from James B. McDougal's personal account on April 4, 1985, signed by Susan McDougal, which appears to be her actual signature. As previously referenced in RTC criminal referral number C0004, this check was written on the McDougal's account when the balance was at a negative $<7,897.73>; the check was force paid, allegedly on McDougal's authority, subsequently overdrawing the account to $<10,897.73>. Both the check from McDougal's personal account and cashier's check #Q2496 were deposited into the same Bill Clinton Political Committee account at the Bank of Cherry Valley.

Again, these nine referrals, submitted to U.S. Attorney Paula Casey on October 8, 1993, were in her possession and available for her review when she rejected referral number C0004 on October 27, 1993.

Obstruction by the RTC's Lawyers

The Kansas City RTC Criminal Investigation Unit had planned to submit the nine additional criminal referrals on October 1, 1993. However, RTC Professional Liability Section Chief Julie Yanda obstructed that effort with her unprecedented demand that her staff first conduct a "legal review" of the referrals. Going back to July 1993, shortly after Ms. Yanda was briefed on the criminal referrals, the Criminal Investigation Unit observed the beginning of a concerted effort by the Professional Liability Section (PLS) to monitor the Madison investigation and exert control over certain aspects of it.

Mr. Iorio advised me that he was receiving complaints from the PLS about the level of communication by the Criminal Investigation Unit with the FBI and the U.S. Attorney's Office in Little Rock, as if to discourage and hamper communication among these offices. The PLS was even critical of my providing verbal assistance to an Assistant U.S. Attorney on a Madison-related matter, even though this was standard procedure. The particular matter in question focused on the tracking of funds from the $300,000 Master Marketing loan, deposited to the McDougals' personal checking account on April 8, 1986. PLS Criminal Coordinator Karen Carmichael termed this effort a "fishing expedition" by the U.S. Attorney's Office, and accused criminal investigators of appearing to "aid" in the "fishing expedition."

As I will discuss later in my testimony, the Independent Counsel's August 17, 1995 indictment against both James B. and Susan H. McDougal included six counts specifically focusing on the Master Marketing transaction, and the disposition of the funds.

On September 30, 1993, the day before the planned submission of the additional criminal referrals, Ms. Yanda imposed her demand for an unprecedented legal review. Four days earlier she had received copies of the referrals, as did a limited number of senior management staff in Washington and Kansas City. Also on September 30, 1993, Ms. Yanda assured Acting RTC General Counsel Glion Curtis that the "proposed referrals" would not be submitted to the U.S. Attorney's Office and the FBI until her staff in the PLS reviewed them.

At the time, Mr. Curtis had an open line of communication to former Treasury Department General Counsel Jean Hanson, who in turn reported to Deputy Treasury Secretary Roger Altman. We now know that Ms. Hanson provided the White House with a "heads-up" on the RTC's criminal referrals the day before, on September 29, 1993. We also now know that this "heads-up"—which Ms. Hanson has testified she delivered to the White House at Mr. Altman's direction, an assertion that

Mr. Altman denies—resulted in a flurry of activity and communications between the White House and Treasury Department. The request for a legal review of the criminal referrals manipulated standard procedures and provided the Treasury Department the opportunity to review and selectively disseminate sensitive criminal referral information. Such sensitive information was in fact disclosed by Ms. Hanson in her September 29, 1993 visit to the White House.

On October 4, 1993, at my initiation, I met with RTC Regional Inspector General Dan Sherry. I informed Mr. Sherry of my concerns about PLS actions during the final phase of the Madison investigation.

On October 8, 1993, the completed legal review appeared by means of the RTC E-mail. The E-mail recipient list is noteworthy as it included additional people to whom the Kansas City RTC Criminal Investigation Unit had not provided copies of the referrals. Among the new recipients were Acting RTC General Counsel Glion Curtis, Washington Assistant General Counsel Thomas Hindes, and Kansas City RTC Senior Counsel David Swiss and Russell Kaufman. The inclusion of these senior Washington and Kansas City managers raises the question: Why, and at precisely what point, did the legal review of the Madison criminal referrals become an issue of such far-reaching concern in the RTC Legal Division? Subsequent testimony revealed the legal review reached as far as the office of Treasury General Counsel Hanson.

The Madison investigation team immediately examined the legal review and found that it consistently focused on civil issues rather than the criminal allegations raised in the referrals. And even the criminal issues raised by the PLS were precisely the kind of issues that the U.S. Attorney's Office and the FBI have subpoena power to investigate, and should investigate, in pursuing a criminal referral.

Finally, this legal review suggested that a political fundraiser could explain the allegation that $6,000 of a $50,000 loan made to Charles Peacock, III on April 5, 1985 had been diverted to the Bill Clinton Political Committee Fund as part of a $12,000 campaign contribution engineered by Jim McDougal. But it was not until 3 weeks after the referrals were submitted that the press reported on an April 5, 1985 fundraiser for Mr. Clinton hosted at Madison by Jim McDougal. This Committee might consider investigating whether this suggestion by the PLS was simply coincidental or if the legal review was assisted by other sources with specific knowledge of both the referral allegations and the April 1985 fundraiser.

The following week, the week of October 11, 1993, the PLS further interposed itself into the criminal investigation process by assuming control of all Madison subpoena compliance matters, which, until that time, was the primary responsibility of the Kansas City RTC Criminal Investigation Unit. This was done without any prior notice. One roadblock created by the PLS was the implementation of a so-called "rolling production format." This meant that rather than submitting records to the FBI in Little Rock in compliance with Grand Jury subpoenas, the records were only available in Kansas City. This made access to these documents more difficult and, in the words of the PLS criminal coordinator, "this way, we will have a record of the documents they are reviewing. . . ."

On November 9, 1993, I was removed from the Madison investigation without warning or explanation at the direction of PLS Chief Julie Yanda. Ironically, 2 weeks later I received a Special Achievement Award for my role in the Madison investigation.

Despite my removal from the Madison investigation, my assistance on this case was frequently solicited by the investigator who replaced me. He provided me with copies of documents and requests from Special Prosecutor Donald Mackay and later Special Prosecutor Robert Fiske. Mr. Ausen and Mr. Iorio, my supervisors, were aware of and encouraged my assistance.

The Breslaw Tape

In early 1994, RTC management hired the law firm of Pillsbury, Madison & Sutro to conduct a civil review of Madison. My supervisors, the RTC civil review coordinator, and Pillsbury attorneys asked for my assistance in their review. I provided substantial support, advice and information throughout the civil review process.

In August 1994, Senior RTC PLS Civil Attorney April Breslaw testified before the House Banking Committee, and intentionally mischaracterized and understated my role in the Madison civil review process. She testified it was "important to note Jean Lewis' distance from the civil review," that Jean Lewis' involvement in the civil review was limited to "gathering records as others requested them," and that Jean Lewis had "no prospects of being part of the investigative team reviewing Madison." Downplaying my involvement in the Madison civil review fits nicely into Ms. Breslaw's distortion of a conversation we had regarding the thrift and Whitewater. In

fact, I earned a second Special Achievement Award for my extensive contribution to the Madison civil review, as did a number of my colleagues.

On February 2, 1994, Washington investigative staff assigned to the Madison civil review, including Ms. Breslaw, came to the Kansas City RTC office to begin a preliminary on-site review of Madison records. Ms. Breslaw wanted to meet with me to discuss Whitewater, and later that day she did just that. And despite Ms. Breslaw's testimony before the House Banking Committee last year, and her effort to misstate and trivialize the significance of the meeting by calling it a casual "chitty-chat" that she said occurred on a nonexistent sofa, it is clear that Ms. Breslaw was there to deliver a message that "the people at the top would like to be able to say Whitewater did not cause a loss to Madison."

Of course, Whitewater did cause a financial loss to Madison, and Madison's failure cost the American people millions of dollars. I was not about to turn my back to the abuses and crimes that my colleagues and I uncovered and reported to the U.S. Attorney and the FBI. It was and is our responsibility to help protect the depositors and taxpayers of this country, and ensure that our laws are enforced. My conversation with Ms. Breslaw was recorded and I encourage Members of the Committee to listen to the tape and draw their own conclusions about her purpose in meeting with me.

Contact with Representative James Leach

Mr. Chairman, Members of the Committee, I was raised in a military environment that encouraged tenacity, courage, honesty and love of country. I was taught respect for our institutions and the rule of law. And I learned that under our Constitution, no one is above the law, no matter how powerful.

But my recent experience at the RTC has shown me that despite the best efforts and intentions of our Founding Fathers, there are individuals, including public officials, who are capable and willing to skirt the law to unjustly enrich themselves at the expense of the rest of us.

Based on my belief that there was an effort underway to control, manipulate and even obstruct the Madison investigation, I contacted Chairman Leach in mid-January 1994. I decided to bring these matters directly to the House Banking Committee as it has oversight of the RTC. I should mention that shortly thereafter Attorney General Janet Reno appointed Robert Fiske Special Prosecutor to investigate Madison and Whitewater.

On February 18, 1994, I met with Chairman Leach for approximately 4 hours. I believe it is important that I provide some additional detail explaining the reasons I sought the meeting with Chairman Leach.

Between October 1993 and January 1994, I was concerned about the Department of Justice's apparent "loss" of referral number C0004, the first criminal referral, only 4 months after Mr. Hubbell's arrival there, as well as Mr. Hubbell's initial reluctance to recuse himself from Madison and Whitewater matters. I also was concerned by the circumstances surrounding U.S. Attorney Paula Casey's rejection of the first criminal referral, as summarized in my testimony earlier, and wondered whether the nine new referrals would receive a serious review.

In addition, I was informed of a meeting in November 1993 between Special Prosecutor Donald Mackay, PLS senior management and Investigations senior management, at which Mr. Mackay said his copy of criminal referral number C0004 had arrived with an unsigned Post-it note on it stating, "We wouldn't be unhappy if this went away."

And that's not all. New directives had been issued by PLS Washington requiring their approval of all outgoing Madison-related correspondence from the Kansas City RTC Criminal Investigation Unit. This removed that unit from its longstanding role in supporting Grand Jury subpoena compliance and created an unprecedented legal review role for the PLS before criminal referrals could be provided to the Justice Department.

In October 1993, I was removed, without explanation, from the Madison communication loop by the PLS criminal coordinator, and instructed to stop communicating directly with the U.S. Attorney's Office. Then, on November 9, 1993—the same day U.S. Attorney Paula Casey recused herself—I was removed from the Madison investigation, again without explanation.

Of course, on February 2, 1994, there was Ms. Breslaw's meeting with me and her effort, on behalf of "the people at the top," to place undue pressure on my conclusion that Whitewater had caused a loss to Madison.

So as you can see, I was extremely troubled by these and other events, and decided to contact Chairman Leach. I met with Chairman Leach on February 18, 1994.

"Don't Call the Independent Counsel"

On March 2, 1994, I received a message from an Associate Counsel in Independent Counsel Robert Fiske's office, requesting a return call to discuss the criminal referrals. I was advised by Mr. Iorio that James Dudine, RTC Investigations Director in Washington, had instructed that I was not to return the call. In a later E-mail, RTC Assistant General Counsel Thomas Hindes stated that all contact with the Special Prosecutor would be handled by Washington PLS, and he wanted to be notified of additional "random contacts" at the field level.

On March 9, 1994, Senior Washington PLS Attorney Mark Gabrellian told me that any meetings I had with Mr. Fiske's staff had to be arranged and attended by PLS staff. I objected to this new arrangement. Mr. Gabrellian said that he would be forced to report my objection to senior Washington management. Specifically, he stated he would advise RTC Head Jack Ryan, RTC General Counsel Ellen Kulka, and RTC Assistant General Counsel Hindes.

Retaliation

In the spring of 1994, a variety of troubling events began. For example, there were three unauthorized entries and searches of my office. In addition, the Washington PLS senior staff were displeased that Mr. Iorio had renewed my employment contract.

But, the culmination of these events occurred on August 15, 1994 when Mr. Iorio, Mr. Ausen and I were placed on 2 weeks' administrative leave following the House Banking Committee hearings in the summer of 1994. On August 15, 1994, Mr. Ausen and Mr. Iorio were summoned to an office, told they were placed on leave, escorted back to their offices, and then out of the building, and told to stay off RTC property. Their offices were locked and sealed, and the main locks to the Investigations Department were changed.

At that time, I was in the hospital. Late that morning a co-worker called informing me that Mr. Iorio and Mr. Ausen had been placed on administrative leave. He said "the purge has begun." He called again later to say that I was also included in the leave. That night the administrative leave was reported on the evening news, although I had not received official notice from the RTC. On August 19, 1994, I was given a memorandum from Assistant General Counsel Hindes in Washington placing me on administrative leave. I, like Mr. Iorio and Mr. Ausen, was banned from RTC property.

According to news accounts, we learned the RTC was conducting "an informal factfinding investigation" into allegations of mismanagement, misuse of travel vouchers and timesheets, and misuse of Government equipment. Remarkably, none of us were contacted for interviews or information.

Through a letter from our attorneys, Mr. Iorio, Mr. Ausen and I initiated a request that the RTC's Office of Inspector General (OIG) be asked to conduct a fair and independent investigation into our administrative leave. Following our written request, and without any further explanation, Mr. Iorio, Mr. Ausen and I were instructed to return to work on August 29, 1994. After we returned to work, the OIG responded to our request and contacted us on a preliminary basis about their pending investigation into the administrative leave. However, that investigation was postponed at the request of Independent Counsel Kenneth Starr's office and his staff continues to review the matter. However, as I sit here today, I have never been told why I was placed on 2 weeks' administrative leave.

Recent Indictments by the Independent Counsel's Office

Prior to the House Banking Committee hearings on August 8 and 9, 1995, the Independent Counsel obtained guilty pleas from Stephen Smith, Chris Wade and Larry Kuca, as well as the initial indictment against Arkansas Governor Jim Guy Tucker, all of whom were clearly identified within the RTC referrals.

Since my last public testimony on this matter, the Independent Counsel announced on August 17, 1995, an additional 21-count indictment against Governor Jim Guy Tucker and James B. and Susan H. McDougal, bringing the number of pleas and indictments against individuals identified in the RTC criminal referrals to six.

Several of the criminal referrals submitted by the RTC Investigation Unit to the Justice Department contributed significantly to the August 17, 1995 indictment. The following information will clearly illustrate this point, and demonstrate the professionalism and thoroughness with which this investigation was undertaken by the RTC Criminal Investigation Unit.

RTC Criminal Referral Number 730CR0190

RTC criminal referral number 730CR0190 provided a substantial basis for several of the counts included in the August 17, 1995 indictment. The referral identified James B. McDougal and Jim Guy Tucker as suspects, and alleged violations of Title 18, United States Code, Section 2 (Aiding and Abetting), Section 657 (Misapplication of Funds), Section 371 (Conspiracy), and Section 1007 (False Statement). In making these allegations, the referral specifically cited the misapplication of $131,641.50 from an October 1985 Madison Guaranty loan number 3004 for $260,000 made to Jim Guy Tucker, purportedly for the purchase of property in South Little Rock, Arkansas. The referral further cited that Mr. Tucker utilized these funds from the loan proceeds to pay off an unrelated debt he had guaranteed at Savers Savings in Little Rock, which had nothing to do with the property purchase in South Little Rock.

Count 1 of the August 17, 1995 indictment charged Jim Guy Tucker and James B. McDougal with violating Title 18, United States Code, Sections 657 (Misapplication of Funds), 1006 (False Entry), and 371 (Conspiracy), specifically citing an October 1985 loan to Jim Guy Tucker for $260,000 to purchase property in South Little Rock. Count 20 of the indictment further charges both Mr. Tucker and Mr. McDougal with violations of Title 18, United States Code, Sections 2 (Aiding and Abetting), and 657 (Misapplication of Funds), specifically for utilizing $131,641.50 of the $260,000 loan proceeds to pay off a loan at Savers Savings.

The charges against Mr. Tucker and Mr. McDougal contained in the August 17, 1995 indictment confirmed allegations outlined in RTC criminal referral number 730CR0190, which are set forth as follows:

> On October 25, 1985, Jim Guy Tucker, with the alleged full knowledge of, and in collusion with Madison Guaranty Savings & Loan ("MGSL") president James B. McDougal [and others] misappropriated $135,000 of loan proceeds from MGS&L #3004 for $260,000, subsequently diverting the funds to pay off principal and interest on a $115,000 real estate note at Savers Savings (Little Rock, Arkansas) co-signed by Jim Guy Tucker and Irene Garner. According to the loan documents and additional documentation culled from the thrift's files, the $260,000 loan was funded for the purpose of purchasing 35 acres of property at a cost of $125,000, with an additional funding of $135,000 earmarked for a "market feasibility study" and land clearing costs.
>
> The initial loan funding was accomplished with two cashier's checks from the MGS&L "loan" account; check #LN3211 for $125,000 to Madison Financial Corporation, and check #LN4731 for $135,000 to Jim Guy Tucker. Check #LN4731 for $135,000, designated for the purpose of a market study and land clearing costs, was then converted into two additional cashiers checks totaling $135,000, drawn on the MGS&L "expense" account; check #Q3682 for $3,358.50 to Jim Guy Tucker (remitted by "self"), and check #Q3679 for $131,641.50 to Savers Federal Savings & Loan Association (with a remitter line that read "Jim Guy Tucker Loan Proceeds"). Check #Q3679 for $131,641.50 was received by Savers Savings on 10/28/85, and applied to pay off loan #1038424–8, carried in the name of Irene Garner on Savers' loan records.

The referral goes on to state:

> It should be noted that the $135,000 funded for the "market study and clearing costs" is 108 percent of the actual loan value on the property, lending serious questions to the economic validity and intent of this transaction.

The referral further states:

> This referral and attached exhibits, will support the allegations that Jim Guy Tucker, James B. McDougal [and others] conspired to make false statements, create false records and divert loan proceeds in order to provide Tucker with the funds necessary to pay off one of his debts at Savers Savings, thereby committing bank fraud. ...

Finally, Section 7(b) of the RTC referral states:

> It is recommended that [among others] Irene Garner, co-signatory with Tucker on the Savers note, be interviewed at length with regard to [her] knowledge of this transaction. It is also recommended that the principals of Arkansas Commercial Realty be identified and interviewed in conjunction with the final disposition of this property and its foreclosure action, as the property was conveyed to this firm by Tucker in late 1985.

On August 17, 1995, a Little Rock Grand Jury handed down a 21-count indictment against Jim Guy Tucker, James B. McDougal, and Susan H. McDougal. The indictment charges in Count 1, under Section 2(a), (b) and (c) of the Introduction,

that James B. McDougal, Jim Guy Tucker and Susan H. McDougal did knowingly and willfully combine, conspire and agree with each other to commit offenses against the United States, to wit:

(a) to knowingly and willfully, and with intent to defraud, misapply and cause to be misapplied the monies, funds and credits of MGSL in violation of Title 18, United States Code, Section 657 [Misapplication of Funds]

(b) to knowingly and willfully make, and cause to be made, false entries in the books and records of MGSL with the intent to defraud the institution and deceive the FHLBB, an agency of the United States, and its examiners appointed to examine MGSL's condition, in violation of Title 18, United States Code, Section 1006 [False Entry]

(c) to knowingly and willfully participate, share in and receive, directly and indirectly, the money, profit, property and benefits of a transaction of MGSL, with the intent to defraud the institution, and the United States and an agency thereof, in violation of Title 18, United States Code, Section 1006 [False Entry]

The indictment further charges in Count 1, under Section 16(a) entitled Overt Acts, that in furtherance of the conspiracy, and to effect the objects thereof, the following overt acts, among others, were committed in the Eastern District of Arkansas, in violation of Title 18, United States Code, Section 371 (Conspiracy):

(a) In or about October 1985, defendant JIM GUY TUCKER obtained a $260,000 loan from MGSL to finance JIM GUY TUCKER'S purchase from MFC property located in South Little Rock. The loan exceeded the value of the property by approximately 100 percent.

In Count 20 the indictment realleges and incorporates by reference paragraphs 1, and 3 through 15 of Count 1 of the indictment which alleges conspiracy, intent to defraud, misapplication of funds, and false entries. In Count 20, Section 2 the indictment further charges that, in violation of Title 18, United States Code, Section 657 (Misapplication of Funds) and Title 18, United States Code, Section 2 (Aiding and Abetting):

On or about March 7, 1984, defendant JIM GUY TUCKER guaranteed a loan for Daniel Garner and his mother, Irene Garner, from Savers Federal Savings & Loan ("Savers"). Defendant JIM GUY TUCKER received a mortgage on the Garner home at 32 Pine Manor, Little Rock, Arkansas, in return, in part, for guaranteeing this loan.

Count 20, Section 3 further charges:

On or about October 25, 1985, defendant JIM GUY TUCKER received a $260,000 loan from MGSL and used $131,641.50 of the MGSL loan proceeds to pay off the Garner loan at Savers. Savers assigned its mortgage on 32 Pine Manor to defendant Jim Guy Tucker.

Count 20, Section 4 charges:

Defendant JIM GUY TUCKER transferred the property to Arkansas Commercial Realty, a company partially owned by CMS, for the purpose of having Arkansas Commercial Realty, rather than defendant JIM GUY TUCKER, himself, foreclose on the Garners' home.

In summary, the indictment charged Mr. Tucker with the specific allegations of conspiracy, misapplication of funds, false entry (alleged as false statement in the referral) and aiding and abetting on the $260,000 loan transaction as specifically outlined in RTC criminal referral number 730CR0190.

RTC Criminal Referral Number 730CR0198

RTC criminal referral number 730CR0198 also provided a substantial basis for several counts outlined in the August 17, 1995 indictment. Identifying James B. McDougal and Jim Guy Tucker (among others) as suspects, the referral specifically alleged violations of Title 18, United States Code, Sections 657 (Misapplication of Funds), 371 (Conspiracy), and 1007 (False Statement) regarding a "land flip" of property located at 1308 Main Street, Little Rock, Arkansas. The referral further cited the use of a $125,000 mortgage loan made by MGS&L to a nominee borrower in October 1985, approximately 7 months after the property had allegedly been conveyed. The referral further identified a second mortgage on the property for $190,000, made to a second nominee borrower in January 1986, indicating an increase in the property value of 422 percent in less than 2 years.

The August 17, 1995 indictment charges James B. McDougal and Jim Guy Tucker with violations of Title 18, United States Code, Sections 657 (Misapplication of

Funds), 1006 (False Entry), 371 (Conspiracy) and 2 (Aiding and Abetting). Specifically, Count 1 of the indictment charges that the defendants "would and did engage in land flip and other fraudulent transactions, . . ." and that "the defendants would and did undertake and cause a series of fraudulent financial transactions . . . including . . . a series of transactions from in or about March 1985 through in or about January 1986 in which the property at 1308 Main Street, Little Rock, Arkansas, was transferred from one nominee to another for the purpose of generating false profits. . . ." The indictment further charged that Jim Guy Tucker "signed a deed conveying the property at 1308 Main Street to another nominee selected by James B. McDougal." Counts 17, 18 and 19 all clearly identify further charges relating specifically to nominee borrowers and the land flip of property at 1308 Main Street.

In summary, the charges against Mr. Tucker and Mr. McDougal contained in the August 17, 1995 indictment confirmed allegations outlined in RTC criminal referral number 730CR0198, which are set forth as follows:

> During the 23 month period between 2/29/84 and 1/15/86, title to the property located at 1308 Main St., Little Rock, Arkansas, was transferred a total of three times. Each time the title was transferred to an associate of James B. McDougal, and an alleged "insider" of Madison Guaranty Savings & Loan ("MGS&L"), and each time MGS&L loaned 100 percent *or more* of the sale price. The value of the property increased from $45,000 in 2/84 to almost $200,000 in 1/86, providing substantial evidence of a land flip, insider abuse, and misuse of position by thrift owner and then CEO, James B. McDougal.
>
> Former McDougal business associate Jim Guy Tucker (in partnership with James B. McDougal and Steve Smith, among others, on Kings River Land Company, Tucker-Smith-McDougal, Smith-Tucker-McDougal, and being a shareholder in McDougal's Madison Bank and Trust of Kingston, Arkansas), originally acquired the 1308 Main property from the estate of [an individual] with a $45,000 loan from MGS&L in February 1984. Tucker subsequently conveyed the property to [Individual "A"] on 3/22/85, via an assumption agreement, including all principal and interest on Tucker's loan, which had matured 1 month prior to [Individual "A's"] assumption of the property.
>
> Documents indicate that [Individual "A"] obtained a mortgage of $125,000 on the 1308 Main property in October 1985, approximately 7 months after the property had allegedly been conveyed. The amount of the mortgage evidenced an alleged appreciation in the property value of 278 percent over a 13 month period. Loan closing documents indicate a mortgage payoff of approximately $106,000; however, the actual mortgage payoff was only $44,428.91 (the total of the Tucker loan principal and interest), with an additional $74,677.74 being paid to [an entity] through a MGS&L cashier's check.
>
> Less than 3 months later, in January 1986 [Individual "A"] conveyed and/or "sold" the property to [Individual "B," a relative of James B. McDougal] for $190,000, financed by MGS&L. [Individual "A"] realized an additional profit of $75,000, in addition to this transaction increasing the property value an additional 66 percent. With this sale to [Individual "B"], the property value increased by 422 percent in slightly less than 2 years. . . .

The referral goes on to state:

> It should also be noted that in August 1985, 2 months prior to [Individual "A's"] mortgage, [Individual "B"] signed a property lease *as the owner* of the 1308 Main property, agreeing to lease space to Madison Financial Corporation (subsidiary of MGS&L), thus giving the appearance that [Individual "A"] was nothing more than a straw borrower, whose involvement would do little more than serve to elevate the property value to a higher level. . . .

The referral further states:

> The exhibits and allegations contained within this referral establish a basis for further investigation into the aforementioned "land flip," as well as misuse of position by former CEO James B. McDougal, conspiracy between James B. McDougal, Jim Guy Tucker [and other individuals] to falsely inflate the value of the property, false statements and documents involving each of the suspects, and the evident intent to defraud, resulting in bank fraud.

The August 17, 1995 indictment against Jim Guy Tucker, James B. McDougal and Susan H. McDougal incorporates the following counts relating to the 1308 Main transaction and, moreover, that under Count 1, Section 2(a), (b) and (c) of the Introduction states, "Jim Guy Tucker, James B. McDougal and Susan H. McDougal did knowingly and willfully combine, conspire and agree with each other to commit of-

fenses against the United States" as outlined in the previous discussion of RTC criminal referral number 730CR0190.

The indictment further charges in Count 1, Section 6 entitled Object of the Conspiracy, and in violation of Title 18, United States Code, Section 371, as follows:

> It was further an object of the conspiracy that the defendants would and did engage in "land flip" and other fraudulent transactions for the purpose of financing individual investment opportunities in which the individual defendants bore no personal risk, while MGS&L, MFC and CMS bore the entire risk.

In addition, under Count 1, Sections 14 and 15(a) entitled Fraudulent Transactions, and in further violation of Title 18, United States Code, Section 371, the indictment charges as follows:

> It was further a part of the conspiracy that defendant JIM GUY TUCKER would and did act as a nominee in transactions involving property on Main Street, in Little Rock, Arkansas.
>
> It was further a part of the conspiracy that to continue to generate fraudulent profits and make funding available for their personal uses, the defendants would and did undertake and cause a series of fraudulent financial transactions with MGS&L, MFC and CMS, including the following:
>
> (a) A series of transactions from in or about March 1985 through in or about January 1986 in which the property at 1308 Main Street, Little Rock, Arkansas, was transferred from one nominee to another for the purpose of generating false profits, and providing cash benefits to defendant JIM GUY TUCKER and others known to the Grand Jury.

Further, under Count 1, Section 15(b) entitled Overt Acts, the indictment charges a violation of Title 18, United States Code, Section 371, as follows:

> In or about October 1985, JIM GUY TUCKER signed a deed conveying the property at 1308 Main Street to another nominee selected by JAMES B. MCDOUGAL.

Count 17 of the indictment further charges that, in violation of Title 18, United States Code, Section 657, and Title 18, United States Code, Section 2:

> On or about October 15, 1985, in Little Rock, in the Eastern District of Arkansas, and elsewhere, JAMES B. MCDOUGAL, defendant herein, connected in a capacity with MGS&L, a financial institution the accounts of which were insured by the FSLIC, and others known to the Grand Jury, aided and abetted by each other, with intent to injure and defraud MGS&L, knowingly and willfully misapplied and caused to be misapplied moneys and funds in excess of $100 belonging to MGS&L, in that defendant JAMES B. MCDOUGAL caused a $125,000 loan to be secured by property located at 1308 Main, to be issued to a third party, knowing full well that (i) the third party was borrowing the funds as an accommodation to defendant JAMES B. MCDOUGAL; (ii) the underlying sales transaction was fraudulent in that the third party was merely a nominee and would exercise no control over the asset ostensibly purchased with the loan proceeds; and (iii) the third party was not creditworthy and could not pay the periodic payments on the loan.

In further violation of Title 18, United States Code, Section 657, and Title 18, United States Code, Section 2, Count 18, the indictment charges as follows:

> On or about February 18, 1986, in Little Rock, in the Eastern District of Arkansas, and elsewhere, JAMES B. MCDOUGAL . . . knowingly and willfully manipulated and caused to be misapplied monies and funds in excess of $100 belonging to MFC, a wholly owned subsidiary of MGS&L, in that defendant JAMES B. MCDOUGAL issued and caused to be issued an $18,000 MFC check to a relative purportedly to pay 6 months of back rent on a building located at 1308 Main Street that MFC leased from the relative beginning ostensibly in August 1985, when, in truth and fact, as defendant JAMES B. MCDOUGAL well knew, no such lease was in place to justify the $18,000 payment, the building itself was held by various nominees, and the relative did not acquire the building until January 15, 1986.

Count 19 charges additional violations of Title 18, United States Code, Section 1006, and Title 18, United States Code, Section 2, as follows:

> In or about February 1986, in Little Rock, in the Eastern District of Arkansas, and elsewhere, JAMES B. MCDOUGAL . . . knowingly and willfully made and caused to be made a false and misleading entry in the books of MFC, a wholly

owned subsidiary of MGS&L, in that defendant JAMES B. MCDOUGAL, in order to justify an $18,000 payment to a relative, prepared and caused to be prepared a backdated lease agreement which falsely stated and represented that a certain relative was the owner of the premises leased by MFC on August 1, 1985, and that MFC owed the relative rent for the months beginning in August 1985, when in truth and in fact, as defendant JAMES B. MCDOUGAL well knew, no such lease existed in August 1985 and defendant JAMES B. MCDOUGAL did not make the relative a nominee owner of the building until January 1986.

In summary, the indictment charged Mr. Tucker and Mr. McDougal with the specific allegations of conspiracy, aiding and abetting, misapplication of funds and false documents (initially alleged as false statements by the RTC) on the 1308 Main Street transaction as clearly, and identically, outlined in RTC criminal referral number 730CR0198.

RTC Criminal Referral Number 730CR0199

RTC criminal referral number 730CR0199 also provided a significant basis for several of the counts contained in the August 17, 1995 indictment. Specifically, the referral identified James B. McDougal as a suspect, along with several of his business associates in the development of resort property on Campobello Island off the coast of New Brunswick, Canada. The allegations in the referral stated that Mr. McDougal and his Campobello business associates violated Title 18, United States Code, Sections 371 (Conspiracy) and 2 (Aiding and Abetting), as well as Sections 657 (Misapplication of Funds) and 1006 (False Statement). The referral further outlined the involvement and participation of McDougal business associate and Madison insider Larry Kuca.

The August 17, 1995 indictment specifically charges James B. McDougal with violations of Title 18, United States Code, Sections 371 and 2, as well as Sections 1341 (Mail Fraud), 1006 (False Entry), and 1014 (False Statement to a Financial Institution). In addition, the indictment outlines the involvement of Campobello participant Mr. Kuca who, as previously mentioned, was also identified in RTC referral number 730CR0199. Mr. Kuca has already pled guilty.

Finally, RTC's Kansas City Criminal Investigation Unit identified, and included in the database submitted as an exhibit to referral C0004, $300,000 deposited into the McDougals' personal checking account on April 8, 1986, which was subsequently determined by Assistant U.S. Attorney Fletcher Jackson to be the CMS loan to Susan H. McDougal "d/b/a Master Marketing." In addition, the Kansas City RTC Criminal Investigation Unit tracked the flow of funds from the loan proceeds through the McDougals' account and provided the information to the U.S. Attorney's Office in Little Rock. The RTC Criminal Investigation Unit substantiated that the loan proceeds were not used for previously stated purposes. Clearly, the unit's work also contributed significantly to the August 17, 1995 indictment as it relates to the Master Marketing transaction.

For example, the charges relating directly to Master Marketing included Counts 1, 2, 13, 14, 15 and 16. Counts 1 and 2 charge both James B. and Susan H. McDougal with violations of Title 18, United States Code, Sections 371 (Conspiracy) and 1343 (Mail Fraud). Counts 13, 14, 15 and 16, consecutively, charge both McDougals with violations of Title 18, United States Code, Sections 1343 (Wire Fraud), 1341 (Mail Fraud), 2 (Aiding and Abetting), 1006 (False Entry) and 1014 (False Statement to a Financial Institution). Each of these four consecutive counts also clearly outline that the McDougals did not intend to utilize the funds for their stated purpose, but did, in fact, spend "the proceeds of the $300,000 Master Marketing loan on items wholly unconnected to any business called 'Master Marketing.'"

In summary, the RTC Criminal Investigation Unit's work relating to the Master Marketing transaction provided a substantial foundation for numerous charges brought against James B. and Susan H. McDougal by the Independent Counsel's Office, as set forth in the August 17, 1995 indictment.

Conclusion

Finally, I have been asked during my deposition and past testimony whether I know, in fact, if the Clintons actually had knowledge of the corruption at Madison. What I do know is there is no doubt the Clintons benefited from the McDougals' activities. For instance, Whitewater, a company in which the Clintons were principals, used kited funds to pay its mortgages, accounting fees and make unauthorized loans to itself. But if the Committee wants to know what the Clintons knew about the corrupt activities resulting in losses to Madison, why not invite the Clintons to testify as I am today and have in the past? Why not ask them directly?

PREPARED STATEMENT OF L. RICHARD IORIO

DIRECTOR OF FIELD INVESTIGATIONS, KANSAS CITY, MISSOURI OFFICE, RTC

NOVEMBER 29, 1995

Mr. Chairman, I would like to thank the Special Committee to Investigate Whitewater Development Corporation and Related Matters for the opportunity to appear today and to present the following statement.

For the past 3½ years, I have been the Director of Investigations for the Resolution Trust Corporation, Kansas City, Missouri office. This office has the responsibility for one hundred eighty-nine (189) failed savings and loan institutions encompassing a geographical area composed of twenty-one (21) States. During this timespan, approximately fifteen hundred (1,500) claims involving failed institutions have been investigated by this office. As of this date, this office has recovered approximately $227 million. Of this amount, over $10 million in recoveries is attributed to the work of the Criminal Investigations Department of the Kansas City office through its Criminal Restitution Order program. The Kansas City Office of Investigations is a complex and sophisticated compilation of individual skills. The cost of operations, which can be verified by documentation, is only a small part of the amount recovered as a result of the investigations conducted.

I provide this information because of the many questions raised about the ability, quality of work and quantity of work handled by this office. As you are aware, the Resolution Trust Corporation ends its existence on December 31, 1995. As of that date, the Kansas City Office of Investigations also ceases to exist. At that time the remaining work will be transferred to the FDIC investigative office in Chicago, Illinois. Both offices have been working together closely to ensure that there is no lapse in the work cycle.

The Investigations Office in Kansas City has continued to be productive and will, at year end, turn over to the Chicago office approximately forty (40) claims. All of these claims are Professional Liability Section (PLS) claims except for a few borrower civil fraud claims. The total amount of potential recoveries represented by these claims is in the $25 to $30 million range. The number of claims is mentioned now to verify the volume of work handled and recoveries obtained by the Kansas City office.

It is also important to note that none of the remaining claims are for criminal investigations. All criminal investigations in the Kansas City office have been completed. The Criminal Investigations Department continues to provide support to various U.S. Attorneys' Offices on criminal referrals that were submitted previously. This Department, when asked, continues to support the Office of Independent Counsel and the Federal Bureau of Investigation as they conclude their investigations of Madison Guaranty Savings & Loan Association.

Part of this ongoing investigation concerns itself with the issues raised by the 10 criminal referrals submitted by the Kansas City Office of Investigations.

In prior interviews, depositions, and House Banking Committee hearings held in August of this year, information was given concerning the unprecedented scrutiny that had been focused on the efforts of preparing the referrals and the subsequent review of referrals. Through this arduous process, the Kansas City Office of Investigations has been subjected to an alteration of the work environment that included instigation of special procedures, a new review mechanism, a slowdown of information flow, information leaks, and for us, Jean Lewis, Lee Ausen and myself, the uncertainty of being placed on administrative leave without prior notification to RTC Investigations management in Washington, DC.

At that point, the review of our work appeared to be more than an effort to confirm or deny our findings. Instead, it appeared that three of us had become the messengers of unwanted news and, if history serves as a guide, were often the targets of attacks meant to deflect attention from the information the messengers bring.

Since that time, both Jean Lewis and Lee Ausen have resigned their positions with the RTC. However, the question of why the three of us were placed on administrative leave has not been answered. When RTC PLS management is approached with this question, there are innuendoes and allegations but no factual information has been presented either verbally or in documentation form. If documentation exists, why has it not been released? Requests by Washington, DC Investigations management have been met with the response that a document of this type does not exist. This raises the issue that guarantees contained in the Fifth Amendment of the U.S. Constitution were violated and continue to be violated to this very date.

In relation to the question concerning placing the three of us on administrative leave, there are a number of other questions concerning the motivation that should

be answered before the RTC is dissolved and no one is present who can provide an answer.

1. The first concern relates to the report of the Inspector General of the RTC on the Rose Law Firm. This report was given to the General Counsel of the RTC for review and appropriate action. Nevertheless, some 4 months later, there has been no decision forthcoming with regard to either policy or employee problems concerning the subject matter. The majority of the Rose overbillings presented to the RTC were processed by the Kansas City Professional Liability Section. In addition, this PLS office knew of ongoing conflicts and failed to either notify the Rose Law Firm and/or seek corrective action.

2. The second issue involves the Pillsbury, Madison & Sutro law firm which was reportedly hired to conduct a civil review of the claim potential in the failed Madison Guaranty Savings & Loan Association. This review lasted approximately 18 months at an estimated cost of approximately $3.5 to $4 million. One small report has been made public by the RTC Legal Division. However, the available information from this report does not deal with the civil claim, but rather covers information that was contained in one of the 10 criminal referrals.

In addition, an interview list contained in the report indicates that other interviews were conducted which pertained to information contained in some of the remaining criminal referrals. Is it possible that Pillsbury, Madison & Sutro were hired at taxpayer expense to review the criminal referrals and evaluate their credibility? If so, why, and to whom has this report been made available? The stated reason was to conduct a civil review.

Further, it appears that Pillsbury, Madison & Sutro interviewed individuals that were of interest to the Office of Independent Counsel. Some of these interviews were conducted prior to the Office of Independent Counsel conducting their own interviews. Why have not all reports prepared by Pillsbury, Madison & Sutro for the RTC Legal Division been made available to the Congress of the United States and to the Office of Independent Counsel?

3. The third concern occurred during 1994 and 1995 when documents were provided by the Kansas City Office of Investigations to the RTC Legal Division in Washington, DC in compliance of subpoenas or other legitimate requests by either the Office of Independent Counsel or the House Banking Committee. On more than one occasion, documents submitted did not arrive at their final destination of either the Office of Independent Counsel or the House Banking Committee. In all of these situations, the documents were resubmitted directly by the Kansas City Office of Investigations. Why did the RTC Legal Division withhold documents?

In addition, some of the documents cleared by the RTC Legal Division were so heavily redacted that they could not be understood. Why was this done?

The American public deserves answers to these questions. In its oversight capacity, the Congress of the United States, and specifically the Senate Banking Committee, can ensure that this information is forthcoming.

The function of the RTC Kansas City Office of Investigations will end on December 31, 1995. As I reflect on my nearly 4 years' involvement with the Madison investigation, there is one overriding concern that comes to mind. Will career Government employees be allowed to do their job in a fair and impartial manner without fear and intimidation? If nothing else comes out of the hearings, the Committee should guarantee that this standard is met.

Thank you.

STATEMENT AND DOCUMENT
FOR
THE COMMITTEE HEARING RECORD, NOVEMBER 29, 1995

Mr. Chairman, I ask that this document be put in the record. This unsigned contract was found at the Resolution Trust Corporation by Ms. L. Jean Lewis's RTC colleagues, near a fax machine used by Ms. Lewis in Kansas City. The contract is between Ms. Lewis and her lawyers and is dated July 12th, 1994.

The contract reveals how Ms. Jean Lewis and her lawyers planned to profit from the political climate that her Whitewater investigation helped create.

According to the contract Ms. Lewis needs to pay her lawyers -- if and only if -- this is important, if Ms. Lewis and her Whitewater investigation prove notorious. If Ms. Lewis or her charges fail to prove notorious, the chances that the lawyers would be paid greatly diminish.

This means that Ms. Lewis and her lawyers had a financial stake in her official work, including her Whitewater investigation, attaining an ever higher level of notoriety.

According to the contract, Ms. Lewis's lawyers may look to only two sources of payment and no other.

First, the lawyers are to look to 30% of the profit from any "intellectual property" -- such as a book and magazine article

that Ms. Lewis would write about her RTC work, her Whitewater investigation, or her congressional appearances.

Secondly, the lawyers are to be paid from sales from the T-shirt contract which is the subject of my questioning of Ms. Lewis at the hearing. Let me quote from the portion of the legal representation contract that references the T-shirt contract:

"The [law] Firm shall receive 3% of all net royalties and generated solely from product sales utilizing the intellectual property matter slogan entitled 'Boys, I'm Taking Charge Here' ('B.I.T.C. H.') or other copyright derivatives thereof..."

This contract indicates how Ms. Lewis planned to profit from her own official work and her Whitewater investigation and utilize the resulting profits to pay her lawyers. If there were no profits she would not have to pay her lawyers.

This raises serious questions about Ms. Lewis's impartiality. It is highly improper in our system -- and I would assume in any system of government -- for an investigator to attempt to profit from their own criminal investigation.

In our system, at least in recent times, criminal investigations have been considered sacrosanct areas where politics are to play no role.

Unfortunately, I know that this standard has not always been adhered to, but I believe that the public has generally been opposed to violations of that zone of impartiality.

Consequently, I think the American people have a right to read this contract if they are to evaluate Ms. Lewis's work.

Senator Barbara Boxer

41-376 97 - 22

Ms. Laura Jean Lewis
6502 Barton Circle #101
Shawnee, Kansas 66203

Re: Representation by Butler & Binion, L.L.P.

Dear Ms. Lewis:

Butler & Binion, a Registered Limited Liability Partnership (the "Firm"), is pleased to have the opportunity to represent you in connection with the matters described below. The purpose of this letter is to set forth the basis upon which the Firm will undertake your representation.

1. Scope of Representation. The Firm will represent you in connection with (i) your intellectual property matters, (ii) continuing your employment as a Senior Criminal Investigator for the Resolution Trust Corporation - Department of Investigations, and (iii) your anticipated testimony before Congress - Congressional Hearings relating to your investigation of Mad Guaranty Savings and Loan Association conducted while in employment of the Resolution Trust Corporation, to the extent that the Firm may do so legally and ethically. It is specifically understood that the Firm's representation of you does not extend to or include the investigation being conducted by Special Counsel, Robert Fiske, or any grand jury testimony related thereto.

2. Payment for Professional Services. The Firm's fees for undertaking this representation will be the Firm's customary charges for such services, which charges are based on the prevailing hourly rate for the attorney or legal assistant involved. Currently, our standard hourly rates for this engagement vary from $90 to $260 per hour for our lawyers, depending on the attorney involved, and $40 to $85 per hour for our legal assistants, depending on the legal assistant involved. The attorney who will be primarily involved in this engagement and his hourly billing rate is as follows:

Michael S. Forshey, Partner - $175.00

3. Reimbursement for Expenses. In addition, you will be responsible for the payment to the Firm for all costs, disbursements, and expenses charged in its representation of you, including, but not limited to, filing fees, publication charges, travel and meals, copying charges, telecopy charges, computer research, messenger and express mail expenses, long distance telephone charges secretarial overtime, and other costs that the Firm incurs in its representation of you.

4. Billing. We contemporaneously record the time required to perform services, and those time records are entered into a computer that generates a monthly bill that the Firm will transmit to you the following month. This billing will set forth a daily description of the services rendered, together with identification of the attorney performing the services and the amount of time billed for the services rendered. You agree to pay the Firm for legal services and associated expenses rendered to you in connection with the representation on the following basis:

(a) Thirty (30%) percent of all royalties after expenses, generated by your intellectual property matters related, directly or indirectly, to matters included in the Scope of Representation shall be paid to the Firm until all invoices rendered by the Firm to you for this representation are paid in full.

(b) After all invoices rendered by the Firm to you for this representation have been paid in full, the Firm shall receive three (3%) percent of all net royalties and generated solely from product sales utilizing the intellectual property matter slogan entitled "Boys, I'm Taking Charge Here" ("B.I.T.C.H."), or other copyright derivatives thereof, i.e., "Bubba...", "Baby... "Bill,..." etc.

The Firm agrees to look solely to items (a) and (b) above for payment of it fees for this representation. You agree that, in the event you elect to terminate the Firm's representation, your obligation to compensate the Firm for it representation of you shall continue as set forth in items (a) and (b) above.

5. Termination of Representation. You may terminate the Firm's representation at any time for any reason upon notice to the Firm. The Firm may, so long as it is ethically able to do so and unless a court orders the Firm to do otherwise, terminate the Firm's representation of you for any reason upon written notice to you. Upon the termination or conclusion of the Firm's representation of you, the Firm will, upon your request, deliver to you the file materials concerning its representation of you. The Firm, however, shall be entitled to retain copies of any such

file(s), provided that such retention will not prejudice you in this representation.

6. Course of Representation. The Firm will represent you competently, promptly, and without improper conflicts of interest. The Firm will keep you reasonably informed about the status of the Firm's representation of you and will promptly comply with reasonable requests for information from you. The Firm will explain legal matters to you sufficiently so that you may make informed decisions concerning the Firm's representation of you. The Firm will further inform you of any relevant limitations on the conduct of the attorneys in the Firm, in light of your expectations. In this regard, in addition to the Texas Disciplinary Rules of Professional Conduct, the State Bar Act, and the State Bar Rules, the Firm and all of the attorneys that comprise it are subject to the Texas Lawyer's Creed - A Mandate for Professionalism promulgated by the Texas Supreme Court, a copy of which has been provided to you for your review.

If this letter accurately sets forth our agreement, please sign the enclosed copy of this letter and return the signed copy to the undersigned in the enclosed self-addressed stamped envelope provided for your convenience.

The Firm appreciates the confidence you have bestowed upon us by retaining us in this matter. Please feel free to contact the undersigned if you have any comments or questions concerning this matter.

BUTLER & BINION, A Registered
Limited Liability Partnership

By: _____
Michael S. Forshey, Partner

_____
LAURA JEAN LEWIS

M:\FCO794\engage2.ltr
071294\lah

HOUSE

RTC

Kansas City Office
INTEROFFICE MEMO

DATE: February 18, 1994

TO: L. Richard Iorio
Field Investigations Officer

From: Gary Davidson
Investigator/Civil Fraud

Subject: #7236 - Madison Guaranty Savings and Loan
Little Rock, Arkansas
Discussion with April Breslaw/PLS

On January 11, 1994, you requested that I conduct a preliminary investigation into Madison Guaranty, for possible Civil Fraud claims. Procedures for conducting a Civil Fraud investigation require a systematic approach of gathering information by reviewing available documentation and interviewing RTC personnel. On January 13th or 14th, I called the assigned PLS attorney, April Breslaw, for the purpose of asking whether she knew of any fraudulent activity that was not addressed in the Criminal Referrals.

Before I could ask my intended question, April asked if I was conducting an investigation into Madison Guaranty. After acknowledging that I was, she indicated that what she was about to tell me was being stated as politely as she could. April felt I should know there are some RTC people in management positions that would take a "dim view" of me investigating Madison Guaranty. She also advised that I should be very careful of who I talk to and what I say, because of the people associated with Madison Guaranty.

After hearing April's comment, I stated that I had read the Criminal Referrals and was aware of the names associated with Madison Guaranty. I also stated that I was informed of the sensitivity of the investigation into the institution. I then asked the question of whether she knew of any fraudulent activity other than what is addressed in the Criminal Referrals. April indicated that there was no other fraudulent activity to her knowledge, and we ended the conversation.

ROUSE

RI0109

Flow of Funds Into and Out of Whitewater Development
Source: CCOOA, Exhibit L
Flowerwood Farms
Madison Financial
Madison Marketing
Jim McDougal
Pembrook Manor
Rolling Manor
Tucker-Smith-McDougal
Whitewater Development Corporation
Bank of Cherry Valley
Jim McDougal
Ozark Realty
Security Bank of Paragould
Tucker-Smith-McDougal
Chris Wade

Whitewater Overdrafts Identified In C0004

(February 1985 - April 1985)

"During the target time frame, Whitewater Development wrote a minimum of 10 checks, totalling $70,639.41. Of these 10 checks, five checks totalling $60,625.00 were written on insufficient funds."

-- From Criminal Referral C0004, p. 7

Check No.	Amount ($)	Date Cleared	Written To:	Balance ($)
133	$1,625	2/21/85	Charles E. James	-1,192.06
134	$1,000	2/28/85	Whitewater "Acct. 317.5"	-1,906.33
132	$3,000	3/13/85	Chris Wade	-4,891.03
137	$25,000	4/1/85	Ozark Realty	-24,470.90
138	$30,000	4/23/85	Jim McDougal	-29,744.87

Total: $60,625

Source: C0004, & Exhibit B

Criminal Referral 196
April 4th & 5th, 1985
Jim McDougal
"Bill Clinton"/ "Bill Clinton Political Committee"
Madison Guaranty
Loan
Charles Peacock III
(defaults)
($3,000 x2)
Flowerwood Farms
(J.W. Fulbright)

M E M O R A N D U M

TO: Clark Walton

FROM: Jean Brennan

DATE: December 11, 1991

SUBJECT: Referral Schedule

The following schedule will reflect the revised priorities of the Arkansas investigations for which I am currently responsible:

7445	FFSL/Paragould	5	09/01/91	12/31/91
2109	Savers/Little Rock	1	01/01/92	01/31/92
7107	Capital/Little Rock	*	02/01/92	02/28/92
7370	First Fed/Little Rock	*	03/01/92	03/31/92
7247	First Am./Fayetteville	3	04/01/92	04/30/92
7207	First Fed/Fayetteville	*	05/01/92	05/31/92
6909	Home Fed/Mountain Home	*	06/01/92	06/30/92
7080	1st State/Mountain Home	*	07/01/92	07/31/92
7088	Landmark/Hot Springs	*	08/01/92	08/31/92
6910	First Fed/Malvern	*	09/01/92	09/30/92
7236	Madison/Little Rock	*	10/01/92	10/01/92
7246	Commonwealth/Osceola	*	11/01/92	11/30/92
7423	Texarkana Fed/Texarkana	*	12/01/92	12/31/92

Steve Irons, FBI, Little Rock, requested that Savers and Capital be reviewed during the first quarter of 1992, which would assist in their investigative efforts and possibly provide additional information regarding Del Chandler, who will probably be indicted this month. In addition, the investigation of Savers will show Louis G. Reese to be a player in several loans, and SA Irons suggested that the Eastern and Western districts could create a collaborative effort on the investigation of Reese, who is in several of the Arkansas institutions. Reese's attorney, Ross Nabatoff, has contacted the US Attorney for both Arkansas districts, wanting to include Arkansas in Reese's prior plea agreement; both USA's declined, and the Arkansas FBI has expressed an interest in pursuing Reese through First America, Savers, and any other institutions where there are indications of his involvement.

I have rescheduled the further investigation of First America/Ft. Smith for April, predominantly due to the fact that SA Mark Grisham, FBI, Fayetteville, has advised me that his efforts have been redirected, by his supervisor and the US Attorney, toward another Fayetteville bank failure which will be concluded by the end of March 1992. At that point, he will be prepared to refocus on the First America investigation involving Louis G. Reese and 8 other suspects.

7:00

Had asked Inv to go after Sowers + 1st should find.

1. Walton called, re [illegible], asked who JGT rather was
Newspaper article - JE then said wash SAC wanted name in this connection
Jim L called. Had a bill setting up advisory ind case + Motions closed this file
Jim L out - Ed, GH had someone re WDS - agent/attorney, CA national security
I called clerk, asked if motions stay, was looking at MG, yes, was there big reason
involved - yes - can't look like there would be a reversal - yes - then there
must be something you think - hope we have fast

ASAC, SAC, Cinn

Banks
GH send to me - re bail ltr.

JE called - appeal not ready. Six have a deadline of 8/31, Dave up a [illegible]
opportunity [illegible] appeal, would do or if comes into
history - very dramatic.

ASAC
Several calls re [illegible] getting it, finally did.
RW + GA to office to complain about Cin's - had heard from WFO's
Dallas

SAC, Copy to SAC
Buffalo
Phone calls from Lewis wanting to know
JE came to see Stahl, Jenner, WC, GH - Finley - 1st question asked as to matter - [illegible]
to GA, afternoon - ok with AG for us to ask again. Said he knew calling Jenner
other day re [illegible] what we were doing, what? wanted to know. The referral went
all the way to the Civil Rights appellate, D.C. had to ask. Told him for such USA
we would not tell him, Stahl volunteered to answer questions, etc.

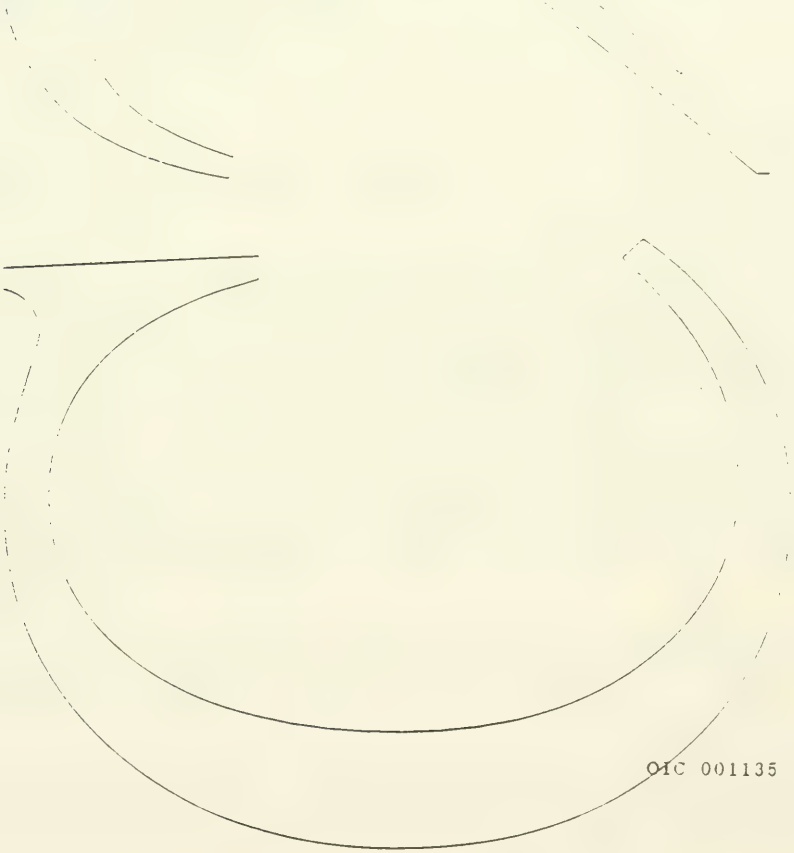
SAC, 2, 3, 4 USA + MAC 8/23

OIC 001124

9/18/92

Jean Lewis, RTC, was in office today for Kell meeting with STOLL, HARRIS, CALHOUN, HALL. Prior to she asked me what status of MADISON was. Told her not decided, but meeting scheduled.

After her meeting she waited for me. She again asked for status and was told she would have to ask USA. She advised her boss, Richard Iorrio, kept asking her to try to find out what we were doing. I reminded her of sensitivity and that, even if USA decided to go forward, these cases took longer than a month to determine what was there. She advised everyone above her in RTC was aware of referral.



Redacted

His ability to lie surpasses that of our most astute politicians ("Gennifer who?? I never slept with that woman"... quoth the illustrious Governor Bill Clinton! Everybody in Arkansas knows he did, the lying bastard, and then put her on the state payroll!)

Redacted

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72201

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an intestigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

29-0-4956-

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

FBI-00001000

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

6502 Barton Circle, #101
Shawnee, Kansas 66203
November 22, 1993

Lakestreet
3846 Digbt Avenue South
Minneapolis, Minnesota 55406

Attention: Miles Jacob

Hey Miles!

In accordance with our conversation of Thursday, November 18, 1993, enclosed is a sample copyrighted T-shirt for your review and consideration. If your company determines that this concept is suitable to your product lines, licensing is available for this, and similar copyrights as noted below.

In addition to the "Boys, I'm Taking Charge Here" concept (to which I affectionately refer as the East Coast Bitch), the following have also been copyrighted, and are available:

- The Texas Bitch "Bubba, I'm Taking Charge Here"
- The California Bitch "Baby, I'm-like, Taking Charge Here."

and last, but certainly not least,

- The Presidential Bitch "Bill,
  I've Taken Charge.
  Hillary"

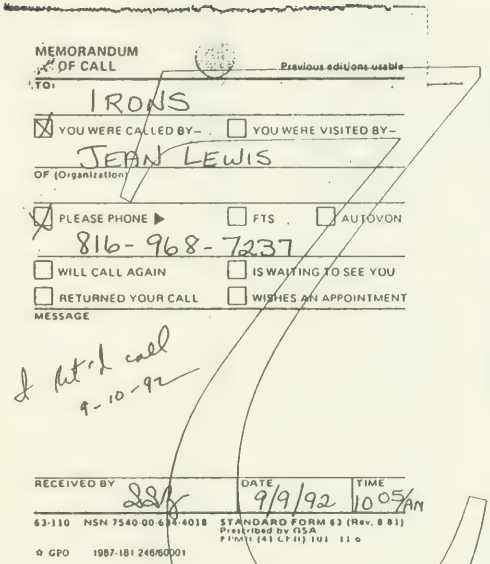
Having been a member of the National Association of Female Executives (NAFE) for several years, a number of my contemporaries, all professional and/or para-professional females, have found this concept to be outrageously funny, as well as reflective of their thinking, and have urged me to market the idea through T-shirts, bumper stickers, coffee mugs, etc. My associates who are professional women in the "Good 'Ol Boy" states (i.e., Texas and the southwest), have pleaded for the opportunity to express their opinions with a "Bubba..." T-shirt. The political concept was an outgrowth of the original idea, and I suspect will have a strong market, given the current political climate.

Should you have further interest in discussing any of the above, please don't hesitate to contact me at my office number (816) 968-7237 between 8:30 a.m. and 5:15 p.m., CST, or at my home number (913) 962-9193 after 6:00 p.m., CST.

I certainly enjoyed visiting with you on the phone, and I look foward to hearing from you in the near future!

Cordially,

L. Jean Lewis



MEMORANDUM
OF CALL
Previous editions usable

TO: IRONS

☒ YOU WERE CALLED BY— ☐ YOU WERE VISITED BY—

JEAN LEWIS

OF (Organization)

☒ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

816-968-7237

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

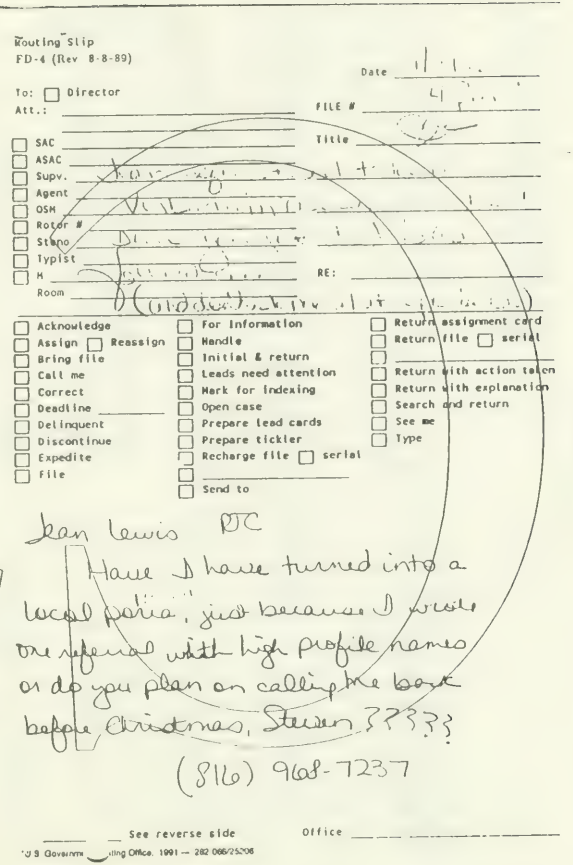
MESSAGE

I left a call
9-10-92

RECEIVED BY [illegible] DATE 9/9/92 TIME 1005 AM

63-110 NSN 7540-00-634-4018 STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

☆ GPO 1987-181-248/60001



Routing Slip
FD-4 (Rev 8-8-89)

Date 11/1

To: ☐ Director
Att.:

FILE #

☐ SAC
☐ ASAC
☐ Supv.
☐ Agent
☐ OSM
☐ Rotor #
☐ Steno
☐ Typist
☐ H
Room

Title

RE:

☐ Acknowledge
☐ Assign ☐ Reassign
☐ Bring file
☐ Call me
☐ Correct
☐ Deadline
☐ Delinquent
☐ Discontinue
☐ Expedite
☐ File

☐ For information
☐ Handle
☐ Initial & return
☐ Leads need attention
☐ Mark for indexing
☐ Open case
☐ Prepare lead cards
☐ Prepare tickler
☐ Recharge file ☐ serial
☐
☐ Send to

☐ Return assignment card
☐ Return file ☐ serial
☐
☐ Return with action taken
☐ Return with explanation
☐ Search and return
☐ See me
☐ Type

Jean Lewis DTC

Have I have turned into a local patia, just because I would one referral with high profile names or do you plan on calling me back before Christmas, Steven ????

(816) 968-7237

___ See reverse side

Office ___

*U.S. Government Printing Office: 1991 — 282 066/25208

676

OIC 001123

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

THURSDAY, NOVEMBER 30, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Would you all stand for the purposes of taking the oath.

[Whereupon, Julie Yanda, Karen Carmichael, and April Breslaw were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Please be seated. Before we take the statements or testimony from the witnesses, you may have written statements or want to make a statement. I'm going to turn to Mr. Chertoff as it relates to Committee business.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, I wanted to report on some information we received late yesterday from the White House in our continuing effort to obtain evidence about the events of the period of time during the week after Vincent Foster died. In particular, Mr. Chairman, I think the Committee will recall that, in the last appearance that we had from Margaret Williams, who is the Chief of Staff to the First Lady, and from Susan Thomases, Mrs. Clinton's friend, Ms. Thomases was asked about a visit she had made on the Tuesday after Mr. Foster's death which was the day in which the documents that had been taken up to the residence were removed over to Williams & Connolly.

What the record at that time that we had indicated was that on Monday, which was the Monday which there was some testimony that the torn-up note was found, Ms. Thomases had been called by the White House even before the President was notified and told about the content of the note. She then testified in her appearance that she had come down the next day, which was not her usual day. We had records that indicated that she was in the White House during the afternoon for some period of time. She was un-

able to recall at that time where she was in the White House or what she was doing.

What we did know, as of a couple of weeks ago, was that during that same Tuesday that Ms. Thomases was at the White House, the President's personal lawyer, Mr. Barnett, came over and saw Ms. Williams, and the two of them discussed with Mrs. Clinton the movement of the documents out of the residence to Williams & Connolly.

Yesterday, we received the records of the actual movements within the White House of Ms. Williams, Mr. Barnett, and Ms. Thomases. We are going to put these records up on the screen, if I can just for a second. What they disclose—and when we get Ms. Thomases back perhaps for another part of the hearing, we will pursue this—what they disclose is that on that Tuesday, Ms. Thomases arrived at the White House within 10 minutes after Mr. Barnett arrived and both of them went up to the second floor of the White House.

Of course, we know from Ms. Williams' testimony that Ms. Williams was up there with Mr. Barnett as well. What the record also discloses is that Ms. Thomases and Mr. Barnett spent an hour and a half up on the second floor, and they both came down, Mr. Barnett at 4:30 p.m. and Ms. Thomases at 4:31 p.m.

Obviously, that may serve to stimulate Ms. Thomases' memory that she was in fact there, meeting with Mr. Barnett, Ms. Williams, and Mrs. Clinton, discussing the movement of the documents over to the residence, and perhaps other things as well.

The other interesting thing disclosed by the records has to do with Diane Blair, who is the wife of James Blair, the General Counsel of Tysons Food, from whom we heard testimony early in the week. And just to refresh your recollection, that testimony related to a conversation that Mr. Lindsey had with Jim Blair when he was trying to ascertain information concerning the progress of this investigation in Arkansas.

What the record discloses is that Diane Blair was also present in the residence on the same day, the 27th. She was on the third floor, and I think the record discloses, she came down at approximately 4:30 p.m.—she went up at 4:19 p.m. and she came down at 4:34 p.m., went back and forth on that day.

What's interesting about that, Mr. Chairman, is that it correlates with certain telephone records, which we have been also addressing over the last few weeks, that have to do with calls that Mrs. Clinton made during the period of time after Mr. Foster died. One of those telephone calls, as you will recall, went to Maggie Williams, one of those calls went to Susan Thomases. The record also disclosed that, at 10:30 a.m. the next morning, a call was made to Diane Blair by Mrs. Clinton at the place she was staying in California.

Now, there remains one missing piece with respect to the telephone calls on the night of Mr. Foster's death, and that is a call to a number, 202–628–7087. We have tried very, very hard to find out who Mrs. Clinton called on that night and spoke to for approximately 10 minutes. I believe that Mr. Fabiani had indicated publicly that the White House was looking into the call.

I would submit for the record a letter dated November 28, from the phone company, confirming that, "After an additional review of our records, we are still unable to identify the persons or entity and the address assigned to this telephone number in July 1993. We have also confirmed that this was not a number used by our cellular affiliate, Bell Atlantic Mobile, during the same time period."

When you put all of this together, we have exhausted every alternative means of finding out who was called on that night by Mrs. Clinton, except for propounding the question to Mrs. Clinton herself. As a consequence, I have prepared and submitted to the Committee for its consideration four interrogatories or four questions which, under the Resolution, the Committee may require to be propounded under oath. Let me read them to the Committee.

The interrogatories read as follows: "Please answer the following questions under oath, under pains of perjury and contempt, and to the best of your recollection, information, and belief. Please have your answers notarized by a qualified notary public.

"Question 1: Did you call the telephone number 202–628–7087 from the Rodham residence in Little Rock, Arkansas at 10:41 p.m. Central Daylight Time on July 20, 1993?

"Question 2: If the answer to question 1 is no, who called the telephone number 202–628–7087 from the Rodham residence in Little Rock, Arkansas at 10:41 p.m. Central Daylight Time on July 20, 1993?"

All these questions can obviously have an I don't know answer, yes, no, or I don't know.

"Question 3: To whom did you or the party identified in the answer to question number 2 speak at the telephone number 202–628–7087 for 10 minutes beginning at 10:41 p.m. Central Daylight Time on July 20, 1993?"

And finally, "Question 4: What is the identity and address of all persons, corporations, or entities registered or having access to the telephone number 202–628–7087 on July 20, 1993?"

Obviously, Mr. Chairman, as you point out, as with any questions that are put to a witness, if the witness does not know the answer, the witness may so state. We have had copies of these passed out.

The CHAIRMAN. Senator Sarbanes, my inclination is to go forward and send this request to Mrs. Clinton.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Well, Mr. Chairman, this is the first I have seen of it, and I——

The CHAIRMAN. That's not unusual these days.

Senator SARBANES. Perhaps we should go ahead and do this, but I think we ought to have some consultation, and particularly, with respect to how far down this interrogatory path we intend to proceed.

The CHAIRMAN. Here is what I would suggest. We will proceed with these witnesses, and before noon or certainly in the early afternoon, we will come to a decision.

My inclination is to press for them. If there is anything that you would like to add, or there is any change you want to suggest, we will leave that to Counsel.

Senator BENNETT. Mr. Chairman.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. I find these revelations this morning interesting. Is there any intent to call Mr. Barnett before the Committee to see if his memory of what may or may not have taken place at the meeting that is suggested by these entry logs is any better than anybody else's memory?

The CHAIRMAN. I have discussed this with Counsel, Mr. Chertoff, today. I believe Mr. Barnett should be asked to come and he should be deposed. My intention is that we should bring Ms. Thomases back in light of further documentation and see if now she still can't recall who she spoke to, given their testimony. We'll give her an opportunity to look, and I'm sure she probably has already seen this information.

Senator BENNETT. If that is the case, Mr. Chairman, and Ms. Thomases does return, I would think it would be well for us to ask Mr. Barnett to come along with her and sit on the same panel so that perhaps their memories can refresh each other.

The CHAIRMAN. I agree. I think some of the other people who have had memory losses too, and who were making phone calls and don't recall why or how, but that's—I think it's safe to assume that we will schedule them and have them brought back.

Senator FAIRCLOTH. Mr. Chairman.

The CHAIRMAN. Yes, Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. I was tied up earlier this morning and I did not get the first part of the hearing.

The CHAIRMAN. You didn't miss anything except Counsel's recommendation that we send interrogatories to Hillary Rodham Clinton to answer these various questions as it relates to the telephone number 202–628–7087.

Senator FAIRCLOTH. Mr. Chairman, I totally agree with the interrogatories, and I think that our Counsel is maybe following the proper direction here, but why not bring Mrs. Clinton? That is a question that keeps coming up, and I see no—the interrogatory is fine, but is there some reason why she simply can't come down here and speak for herself and tell us what's going on and what went on, and not have to go back and forth with paperwork?

It was suggested yesterday by Ms. Lewis, and we have seen these conflicting testimonies among her very closest advisers and friends, and I think it would be befitting on her and I think she would want to come and very simply tell us what happened, plain, simple English language and cut out all the confusion that has mounted here and seems to be mounting at a rather rapid rate now that we're going back to her again with interrogatories.

The CHAIRMAN. Again, I am not prepared to entertain that at this time, but I certainly understand the nature of my friend and colleague Senator Faircloth's request, but at this time it's my incli-

nation to go forward with the interrogatories, make whatever changes might be necessary and send them out today. I'm not prepared to go any further.

Before we move on to the Committee's business, I want to give an update on the status of Jean Lewis, who testified before the Committee yesterday. As most people I'm sure are aware, during the examination of Ms. Lewis in the afternoon, she became ill. I have been advised by her attorney that she was admitted to an area hospital. She remains there undergoing tests. She did have very high blood pressure, and she does have a problem with high blood pressure. We certainly hope that she makes a speedy recovery. So for obvious reasons, we will move on to the other witnesses.

At this time, may I ask any of the witnesses who have statements and would like to give them, we would be ready to receive them.

Ms. Yanda.

SWORN TESTIMONY OF JULIE F. YANDA
SENIOR COUNSEL, PROFESSIONAL LIABILITY SECTION
RTC, KANSAS CITY, MISSOURI

Ms. YANDA. Mr. Chairman and Members of this Committee, it gives me no pleasure to be before you today. My presence can only be to address allegations that would be libelous if they were not so ludicrous. Let me state clearly and without qualification, I have never been a part of any conspiracy to obstruct, hamper, and manipulate the results of the investigation into Madison Guaranty Savings & Loan, or any other investigation.

Rather, I have always sought to carry out my official duties with the professionalism and commitment that the American people rightfully expect of public employees. It is the same professionalism and commitment to my clients that I have sought to maintain throughout my 16 years of legal practice.

The facts surrounding the legal review in October 1993, of nine criminal referrals relating to Madison Guaranty Savings & Loan are relatively simple and are not open to credible debate. When I learned in late September 1993, that these criminal referrals had been completed by the investigations unit, I requested copies of the referrals in order for my lawyers to conduct a legal review. The basis for my request was an RTC policy directive dated June 17, 1993, on the subject of criminal referrals.

Paragraph 1 of that directive explained that its purpose was to consolidate instructions and guidance on making criminal referrals to the U.S. Department of Justice and other agencies.

Paragraph 2 of that directive, entitled "policy," stated that, "Except in rare circumstances, criminal referrals shall be reviewed by RTC Investigations and Legal Division Criminal Coordinators before they are delivered to the U.S. Attorney and the FBI or other investigative agencies. RTC criminal coordinators shall make certain that all required and support documents are provided." I acted consistently with this policy directive.

In September 1993, the Legal Division Criminal Coordinator for the Kansas City office was Karen Carmichael, an attorney in my Section who had previously served as the Criminal Coordinator in Tulsa, Oklahoma. The unambiguous language of the June 17 direc-

tive required that she review any criminal referrals before they were delivered to the U.S. Attorney or the FBI.

To help her conduct the required review of the Madison referrals, I assigned Philip Adams, an experienced former Federal prosecutor who served on the Department of Justice Organized Crime Strike Force in Kansas City, Missouri. Mr. Adams obtained copies of the Madison criminal referrals from the investigations unit late in the afternoon of Friday, September 24, 1993. The copies he received, however, did not include exhibits or supporting documentation, without which any meaningful review was impossible. Ms. Carmichael and Mr. Adams did not receive those additional documents until Wednesday, September 29, 1993.

Nevertheless, these two dedicated professionals succeeded in completing a quality review of the nine referrals by Friday, October 8, raising issues and concerns that merited consideration before the referrals were sent to the U.S. Attorney. Those issues and concerns ranged from factual, such as whether a named suspect was still alive—she was not—to analytical, such as why individuals were named as suspects when, on the face of the supporting documents, those individuals appeared to be the victims of fraud, rather than the perpetrators.

I went over the review with Ms. Carmichael and Mr. Adams on October 8, making relatively minor suggestions aimed at improving the quality of the review itself. When they provided a draft that I considered satisfactory, I immediately transmitted it by E-mail to individuals in investigations and in my chain of supervision.

Far from wanting to obstruct these referrals, the only goal that my attorneys and I hoped to achieve by conducting the legal review was to raise issues and concerns that, if addressed, would make the referrals clearer, more legally sound, and in general, a better product more likely to be acted upon by the U.S. Attorney and the FBI. I honestly do not believe, for example, that it is in the interest of the RTC for its investigators to recommend to the U.S. Attorney and the FBI that they conduct a criminal investigation of a dead person.

Others have charged, and I use that term advisedly, that the legal review of the Madison referrals was unprecedented. The fact is that from the issuance of the June 17, 1993 directive until September 22, 1993, when I learned that the Madison referrals were ready for delivery to the U.S. Attorney and the FBI, I was not provided any other referral for legal review, nor was I informed of the existence of any completed criminal referrals.

Thus, the review of the Madison referrals was unprecedented, only in the unremarkable sense that they were the first ones made available to my lawyers and me in order for such a review to occur. I assure you that if previous referrals had been provided for review, they would have received the same professional analysis that Ms. Carmichael and Mr. Adams applied to the Madison referrals, and that attorneys in my Section have applied to every referral that we have received since September 1993.

Mr. Chairman, I do not deserve to have my integrity and my professionalism publicly questioned, nor do Ms. Carmichael and Mr. Adams deserve to have their integrity and professionalism publicly questioned. At all times and in all regards, Ms. Carmichael, Mr.

Adams, and I acted in accordance with RTC policy directives and to the best of our professional abilities. We would have acted no differently had the criminal referrals in question dealt with some savings institution other than Madison. It simply made no difference to us.

Let me say in conclusion that I am proud of the opportunity I have had at the RTC to serve the American public. I am also proud of the jobs that my colleagues and I have done under circumstances that have often been extraordinarily trying. Attorneys and outside counsel under my supervision have succeeded in recouping some $200 million for American taxpayers from individuals and entities whose actions contributed to the savings and loan crisis. But being required to answer in such a public way, baseless and irresponsible allegations that I obstructed the Madison referrals is an unjustifiably high price to pay for my service.

The CHAIRMAN. Ms. Carmichael, do you have a statement?

SWORN TESTIMONY OF KAREN CARMICHAEL
SENIOR ATTORNEY, PROFESSIONAL LIABILITY SECTION
RTC, KANSAS CITY, MISSOURI

Ms. CARMICHAEL. No, I do not.

The CHAIRMAN. Ms. Breslaw.

SWORN TESTIMONY OF APRIL A. BRESLAW
COUNSEL, PROFESSIONAL LIABILITY SECTION
RTC, KANSAS CITY, MISSOURI

Ms. BRESLAW. Thank you. Good morning, Mr. Chairman and Members of the Committee.

I am not a political appointee. I have never been a political appointee. I have never worked on a political campaign. Instead, I joined the Federal Government during the Reagan Administration. As a result of a competitive process, I was offered a regional attorney position in the FDIC's Dallas office. Over time, I have received five merit awards, including one granted in the spring of 1995. I have also been promoted five times. I am now a counsel grade 15, detailed to the RTC Professional Liabilities Section. I have had a successful career with the Government. As a permanent employee of the FDIC, I will return to that agency when the RTC completes its mission at the end of the year.

The Chairman's decision to invite me to testify is fair. Although I have not been offered the opportunity to review many of the documents and other material on which the Committee is relying, the opportunity to testify provides me with a basic chance to respond to the farfetched claims which have been made by other witnesses. I appreciate that.

There are four matters that I wish to address. First, my conversation with Jean Lewis on February 2, 1994. To the best of my recollection, the events of February 2, 1994 unfolded as follows: I left Washington, DC on an early morning flight and arrived in Kansas City at roughly 10:30 a.m. It was the first and only time that I had visited the RTC Kansas City Office of Investigations, so it was the first and only time that I have met Ms. Lewis. To the best of my recollection, it was the first and only time that I have met her supervisor, Richard Iorio.

I spent most of the day reviewing Madison documents. At one point, Mr. Iorio walked through the suite of offices, displaying a copy of a letter written by Acting RTC Chief Executive Altman, dated February 1 or 2, 1994. The letter was addressed to various Members of Congress. It responded to their concerns about statute of limitations issues.

I found it odd that Mr. Iorio would have a copy of such a letter because RTC staff are not generally copied on the Chief Executive Officer's correspondence. I thought that it was inappropriate for Mr. Iorio to alarm the Kansas City staff by using the letter to emphasize the growing tension between the RTC and Congress over the civil statute of limitations for Madison claims.

At the suggestion of Mr. Iorio, I went to lunch with several of the investigators. During lunch, Mr. Iorio encouraged me to drink alcohol. I declined. After lunch I returned to a conference room which contained Madison documents. At Mr. Iorio's suggestion, I spoke briefly to Investigator Kenneth Foust about Madison issues during the afternoon. It was the first and only time that I met Mr. Foust.

Several times during the day, Mr. Iorio prodded me to speak to Ms. Lewis. After Mr. Iorio escorted me to Mr. Foust's office, he returned to escort me to Ms. Lewis' office. In retrospect, it was odd that Mr. Iorio went to such lengths to escort me to the offices of his staffers and then purposely left us alone to talk. It is possible that he was aware that one or more of his employees' offices were bugged but did not want his own voice recorded.

It is difficult for me to discuss my conversation with Ms. Lewis because I have no detailed recollection of it. At the time I regarded it as a cursory and unimportant chat at the end of a long day. Mainly I recall that I was very tired by the time we spoke.

Moreover, I was not provided with a transcript of the tape of the conversation until August 1995. I heard the complete tape of the conversation for the first time yesterday during this Committee's hearing, but I assure you that I was not carrying a message to Ms. Lewis from RTC Chief Executive Officer Jack Ryan, General Counsel Ellen Kulka, or anyone else.

I had never spoken with Mr. Ryan prior to February 2, 1994. At that time I had spoken to Ms. Kulka twice; first, I said hello to her at a reception when she joined the RTC a few weeks earlier. Our only other conversation occurred late one evening when Ms. Kulka telephoned my Section looking for a file. I was working late and happened to field the call.

Neither Mr. Ryan nor Ms. Kulka, nor anyone else, communicated to me either directly or indirectly any message to pass on to Ms. Lewis or anyone else about the Madison investigation or about Whitewater.

Ms. Lewis has greatly exaggerated the importance of her role as of February 2, 1994. As she testified yesterday, she was removed from the criminal investigation on November 9, 1993. She is not and never has been a civil investigator. To the best of my knowledge, she played no role in organizing, staffing, or supervising the Madison civil investigation underway in 1994. Her distance from civil matters is important. Fundamentally, she alleges that my con-

versation with her had the potential for influencing the outcome of the civil investigation. This is simply incorrect.

Ms. Lewis never had any prospect of playing a significant role in the civil investigation. Instead, her involvement was limited to gathering records as others requested them.

During the hearing held by the House Banking Committee last summer, Congresswoman Waters observed that the wrong person might have been accused of trying to influence the outcome of the civil project.

During the hearing we had the following dialog: Representative Waters stated, "Now, what's interesting about all of this is that you were in the middle of the civil investigation, is that right?" I answered, "That's true." Representative Waters then explained, "What's also interesting is that Ms. Lewis had finished her work on the criminal referrals. They were already in the hands of the Justice Department and the Special Prosecutor. And for all intents and purposes, her work was done. But you are the one who could have been influenced. Throughout this entire conversation, all kinds of information is volunteered to you, who are in the middle of the investigation, to tell you what you should be thinking, what you should know, and how you should conclude your investigation. You were set up, I believe. I think the tables have been turned here. You were set up and there was an attempt to influence the outcome of your investigation."

Ms. Lewis testified yesterday that she made a conscious decision to secretly record our conversation. Such behavior is a crime in many jurisdictions, yet she testified that she decided to continue her secret taping while our conversation was in progress. Moreover, Ms. Lewis testified last summer that her first contact with Congressman Leach occurred in January 1994, and in yesterday's testimony, she skipped over this contact and focused on a later meeting with Congressman Leach in February 1994.

It is significant that by the time she secretly taped our talk on February 2, 1994, she had already been in contact with the Congressman who had orchestrated Whitewater hearings before the House Banking Committee. Both the taping and the timeframe raise questions about her ethics.

During my testimony before the House Banking Committee last summer, Chairman Leach stated that, "It's my view that Ms. Breslaw has been legitimately victimized in the sense that it is totally improper for someone else to tape a conversation." However, the tape reveals that I repeatedly assured Ms. Lewis that everyone sought honest answers.

With regard to senior RTC officials, the tape indicates that I said, "I don't believe at all and I don't want to suggest at all that they want us to reach a certain conclusion." On hearing this comment, no reasonable person could conclude that I was suggesting the opposite. Indeed, listening to the tape yesterday only confirmed that I did not challenge Ms. Lewis' arguments as to why Whitewater caused a loss to Madison.

Second, the memorandum written by Gary Davidson on February 18, 1994. This memorandum was written over a month after Gary Davidson telephoned me. The suggestion that Mr. Iorio asked Mr. Davidson to reopen the Madison civil investigation on January 11,

1994 is odd. Just a few weeks earlier, in December 1993, Mr. Iorio submitted a report to his senior supervisors in Washington in which he concluded that Madison civil claims should not be pursued. Mr. Iorio made this assertion because he had concluded that the civil targets did not have the resources to satisfy a judgment. If Mr. Iorio felt that it was necessary to apprise his Washington supervisors that Madison civil claims could not be cost-effectively pursued in December 1993, why would he ask Gary Davidson to commence a new Madison civil investigation on January 11, 1994?

To the best of my knowledge, there was no open Madison civil investigation when Mr. Davidson telephoned me on January 13 or 14, 1994. Instead, it is my understanding that the 1994 Madison civil project was initiated by Ms. Kulka after she joined the RTC as General Counsel on January 17, 1994.

To my knowledge, the only open inquiries at the time of Mr. Davidson's call on January 13 or 14, 1994 involved potential Rose Law Firm conflicts of interest, and to the best of my recollection, Mr. Davidson called to ask me questions about the Rose Law Firm. I believe that I told him that senior FDIC officials were analyzing Rose Law Firm issues. I believe that I told him that it was not necessary for him to review these issues because others who were familiar with the ethical rules applicable to lawyers had taken responsibility for the project. I believe I also cautioned him about speaking about these matters with the press.

The bottom line is that it is strange for Mr. Davidson to suggest that I tried to discourage a Madison civil investigation on January 13 or 14, 1994, because, to the best of my knowledge, no such investigation existed at that time.

Third, the Rose Law Firm and Webster Hubbell. Before Madison failed in 1989, it filed suit against the accounting firm which audited its books. When the Government took over Madison, we inherited responsibility for the case. The law firm that Madison had originally hired had several conflicts of interest with the FDIC. Specifically, the firm was representing parties against the FDIC in three separate cases.

The CHAIRMAN. Did you recommend that the Rose Law Firm be hired in that case?

Ms. BRESLAW. Yes, sir, in fact that's the next paragraph. I would appreciate it if I could just finish the statement, sir.

Specifically, the firm was representing parties against the FDIC in three separate cases. I was one of the lawyers representing the FDIC on the other side of one of those cases. It was, therefore, necessary to replace the firm. I hired the Rose Law Firm for this project because I was satisfied with the way in which the firm had handled a previous matter. When a client hires a law firm and the Government was a client in this instance, the firm has an obligation to insure that there are no conflicts of interest.

The ethical rules require lawyers to do this, even if they are not asked. The client cannot do this job itself. Short of issuing a subpoena, the Government has no way of knowing who the firm's other clients are. Only the firm has this information. When I retained the Rose Firm to work on the Madison accounting case, it disclosed no conflicts of interest.

A few months later I learned that Seth Ward was Webster Hubbell's father-in-law and that Mr. Ward was in litigation with Madison. Under the ethical rules, an adverse interest by an in-law is not imputed to a lawyer. It is not a conflict of interest.

Nevertheless, I asked Mr. Hubbell about Mr. Ward. Mr. Hubbell told me that he was not representing Mr. Ward and that he would not do so in the future. I asked Mr. Hubbell to confirm in writing the fact that he did not represent Mr. Ward. He wrote me a letter to that effect, and I concluded, based on that information, that there was no conflict.

Given the same information, I would reach the same conclusion today. The conclusion that others have reached, that there was a conflict, is based on information that I did not and do not have.

The accounting case settled in 1991 for $1,025,000. This was an excellent settlement. Our internal analysis showed that the likely result if the case had gone to trial was a verdict of $1,050,000, just $25,000 more than we settled for. The costs of trying the case would have greatly exceeded that $25,000 difference.

Later, through the press, questions were raised about whether the Rose Firm had represented Madison in the mid-1980's. These stories began to appear during the 1992 campaign. However, the fact that Madison was a former client of the Rose Firm does not create a conflict of interest. In the accounting case, the Government was asserting Madison's claims. Thus, representing Madison in the past would not have prevented the Rose Firm from asserting Madison's claims on behalf of the Government later.

In any event, I was not aware of this prior representation of Madison during the time in which the Rose Firm was representing the Government in the accounting case.

In September 1993, I received an inquiry from a reporter regarding this issue. In response I telephoned the two lawyers who were primarily responsible for the case, Richard Donovan, who remains employed at the Rose Law Firm, and Webster Hubbell, who was then Associate Attorney General of the United States. Neither had a strong recollection of the representation, which apparently took place approximately 8 years earlier, in 1986.

Last summer when I testified before the House Banking Committee, Congresswoman Maloney and I discussed the conversation with Mr. Hubbell. Representative Maloney asked, "During your discussion with Mr. Hubbell, did you discuss the existence of criminal referrals related to Madison Guaranty?" I answered, "No."

Representative Maloney asked, "Did you discuss with Mr. Hubbell anything that related to not only the criminal referrals but also to the criminal investigation of Madison Guaranty?" I answered, "No."

I stand by those answers today.

During the hearing held last summer, Representative Maloney asked Mr. Hubbell, "Did Ms. Breslaw inform you of the existence of criminal referrals related to Madison Guaranty?" Mr. Hubbell, who was also testifying under oath, answered, "No, she did not."

Last summer, prior to the House hearings, the House Committee staff suggested that my conversation in the fall of 1993, with Mr. Hubbell was for the purpose of informing him of the criminal referrals. This testimony thoroughly refutes that false accusation.

Fourth, the cost of Madison investigations to taxpayers. It is important to understand that the role of the RTC is to recover losses suffered by failed institutions. Before we make such claims, we evaluate whether they can be cost-effectively pursued. In other words, we evaluate the financial condition of potential targets of RTC lawsuits.

By the end of 1993, four independent parties had concluded that the Madison targets could not satisfy a judgment in an amount that would exceed the cost of obtaining it. Outside counsel, Mr. Gerrish, made that judgment in 1988. The FDIC investigators initially responsible for Madison reached the same conclusion in 1989.

After I reached that conclusion in 1990, my supervisors closed the investigation. Mr. Foust, a Kansas City investigator, reached the same conclusion in a report issued in December 1993. Mr. Iorio, who supervises Mr. Foust, testified last summer that he agreed with Mr. Foust's conclusion. According to the transcript of the tape of our conversation, Ms. Lewis also agreed.

On February 2, 1994, she said, "It's self-defeating to get into that kind of litigative process and to that expense when you know there's no return." Given the astonishing amount of Government resources which have been used on the Madison civil investigations, I believe that if the RTC can say honestly that Whitewater did not cause a loss to Madison, it should stop wasting the taxpayers' money on the project.

Moreover, the amount of taxpayer resources which have been spent investigating Ms. Lewis' allegations about the career RTC employees who worked on Madison issues in 1993 and 1994 is now bordering on the absurd. By my count, this proceeding represents the 12th time in which I have been questioned about Madison matters by parties employed by the Federal Government. It is the seventh time in which I have been questioned by Members of Congress or their staffs. It is the third time in which I have testified publicly about these issues.

Over a year ago I believe that Congressman Barney Frank observed with regard to Whitewater generally that, "There is no there there." For me this comment rings very true. No matter how much of a mountain Ms. Lewis tries to make of our conversation on February 2, 1994, it remains a molehill.

The CHAIRMAN. I am going to make a comment about, "There is no there there." I see people having pled guilty, I see people who are under indictment and I think there is a "there" there. I think it's absurd to suggest that somehow we are impinging on your rights because we're attempting to find out how it is that you made determinations and how you made reviews and found that there was no conflict of interest, and we'll get into that. How it is that when we hear testimony from your own lips that was recorded, and it may have been that that was a violation of good ethics, that it was wrong, that it was not the proper thing to do, and we saw some of that yesterday here that unfortunately came from this Committee, and I want to find out how that came about. I haven't gotten into that yet, but—in terms of invasions of privacy, but there are some pretty chilling remarks, not taking them out of context, looking at the total matter.

I have to tell you that we will ask you to explain it. It is our obligation to ask, so it is not intended to inflict pain on anyone, and this is not easy for the Members of this Committee, but we have the responsibility of getting the facts.

But to suggest there's no "there" there when indeed it seems to this Senator the record is quite clear that Madison was used as a piggy bank, and you may suggest that it did not pay to get into the civil litigation, and indeed it would appear that most people agreed that it would appear that there were very little in the way of returns, but to say we have no right to look as it related to the looting of that institution on a criminal side, I would suggest to you that we have every right and an obligation to see that it was carried out.

Ms. BRESLAW. Excuse me, sir, two small points. One is that, of course, when my conversation was secretly taped, I was not under oath, it was not testimony. Second, sir, I was speaking only about the part of this matter that relates to me, as I think you understand. I work on civil matters, not criminal matters, so I agree with you, the criminal matters can and should be pursued.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Ms. Breslaw, did you have an opportunity before you hired the Rose Law Firm when you first got involved in the matter involving Madison Guaranty to look at the Federal Home Loan Bank Board examination reports related to the institution?

Ms. BRESLAW. To the best of my recollection, I did not.

Mr. CHERTOFF. Would you agree with me that the Federal Home Loan Bank Board examinations, ongoing examinations showing problems at an institution that bordered on insolvency, bad record-keeping, and potential fraud, would be useful things for a person to review when you take over the failed institution and start to look for people to sue?

Ms. BRESLAW. It was, but as you know the accounting case had already been filed by the association before it failed, and because we had a short deadline to move the case from State court to Federal court, the decision to hire the Rose Law Firm basically to substitute counsel was made very quickly, before I had an opportunity to look at those exams.

So I generally agree that the exams are important, but in that timeframe, I did not have time to review them.

Mr. CHERTOFF. Now, after you hired the Rose Law Firm, it was brought to your attention by one of the staff people that there was a problem that they had identified with a potential conflict of interest because of the relationship between Mr. Hubbell, a partner at Rose, and the fact that his father-in-law, Seth Ward, was involved in litigation with the bank; right?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. You asked Mr. Hubbell about that; right?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. And Mr. Hubbell assured you that there was no conflict here; right?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. Did you ask Mr. Hubbell why he hadn't raised it before?

Ms. BRESLAW. I don't remember.

Mr. CHERTOFF. Did you feel in your own mind a question, given the fact that you've told us there's an obligation by the lawyer to come forward and identify ethical problems, did you say to yourself, why wouldn't they come forward and identify this problem for me?

Ms. BRESLAW. You know, sir, this happened in June 1989, which is now over 6 years ago. I just don't remember what I was thinking at that time.

Mr. CHERTOFF. Did you at that point decide you wanted to go back and take a look at the examination reports to indicate to you what this litigation and what this involvement of Mr. Hubbell's father-in-law was?

Ms. BRESLAW. Reviewing the exam reports is a routine part of our process, so I'm sure I had either read them by then or planned to do so, but again because it's over 6 years later, I don't remember what my exact thoughts were.

Mr. CHERTOFF. Well, I'm going to refresh your memory because we've handed out to you and to everybody else, I think, a copy of a May 8, 1986 interim examination report of the Federal Home Loan Bank Board, and one of the things it talks about is this very issue involving Seth Ward, Mr. Hubbell's father-in-law.

What it tells you, and this was known in 1986, 3 years before this whole issue arose, is that Seth Ward was not merely involved in some litigation, but that he was involved in what was identified by the bank examiners as a fictitious sale designed to avoid regulatory requirements on the investment in speculative real estate deals, a transaction in which the bank warehouse, wanted to buy some property in Mr. Ward's name, and what they did was gave him or lent him the money to purchase the property, they took an option to take the property back, and they agreed to pay for all of his associated costs and expenses.

Now, you understand what a fictitious sale is; right?

Ms. BRESLAW. Yes, sir.

Mr. CHERTOFF. You understand that one of the classic savings and loan fraud devices in the 1980's was to have a straw man or a fictitious purchaser purchase property on behalf of a bank that was forbidden to purchase the property because it was too speculative; right?

Ms. BRESLAW. Yes, sir.

Mr. CHERTOFF. This examination report, which was available as of 1986, says, and I quote, at page 11, "Ward apparently warehoused this land to reduce Madison Financial's investment and the attendant borrowing from Madison Guaranty. In this way, limitations on Madison Guaranty's investment in its service corporation are avoided." Does that ring a bell with you?

Ms. BRESLAW. It rings a bell now but I don't remember whether I knew that in June 1989.

Mr. CHERTOFF. Would you agree with me, therefore, that in a suit between Madison and its independent auditors, the independent auditors would likely defend the suit based on the ground that the management of the bank was thoroughly corrupt and that one of the people they would point the finger at would be Mr. Ward? Would that kind of make sense to you?

Ms. BRESLAW. Well, sir, because we know what happened in the accounting case, as is typical in these cases, the accountants ar-

gued that even if their audits were defective, the defects did not cause a loss because they did argue that management would not have changed its approach even if proper audits had been received.

I don't recall specifically that this particular transaction came up, but actually that is a very common defense for the accountants.

Mr. CHERTOFF. So did Mr. Hubbell say to you, look, my understanding is that Mr. Ward's litigation, my father-in-law's litigation here, has to do with accusations that he was a co-conspirator in fictitious and illegal purchases? He didn't say that to you, did he?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. You didn't get that or that didn't leap out at you from your review of this examination report?

Ms. BRESLAW. Sir, as I have said, I do not remember when I reviewed the exam reports.

Mr. CHERTOFF. At the point at which you did review the exam report, did you say to yourself, my God, Seth Ward, the father-in-law of the partner handling this matter, is identified by a Federal Home Loan Bank Board examination as a co-conspirator in, "Fictitious sales and warehousing in order to avoid regulatory restrictions"? Did that jump out at you when you finally read that?

Ms. BRESLAW. I don't remember.

Mr. CHERTOFF. If that were brought to your attention would you agree with me that that alone would be a basis to say that the Rose Law Firm and Mr. Hubbell should not be involved in litigation in which the integrity of Madison was an issue?

Ms. BRESLAW. That raises a real question, yes, sir.

Mr. CHERTOFF. Now, let me raise another question. Guess which law firm handled this fictitious transaction in this warehousing? You want to take a guess?

Ms. BRESLAW. No, sir, I don't want to speculate.

Mr. CHERTOFF. It's the Rose Law Firm. Did you know that?

Ms. BRESLAW. I don't think so, sir.

Mr. CHERTOFF. Did you know—I'm going to put this up on the Elmo—that there's an invoice, January 30, 1986, for legal services involving this very transaction, which involved the sale to Seth Ward as a straw man or fictitious purchaser? Have you ever seen this before?

Ms. BRESLAW. I don't think so, sir.

Mr. CHERTOFF. Did Mr. Hubbell volunteer this to you?

Ms. BRESLAW. I don't believe so.

Mr. CHERTOFF. I will read to you who furnished the legal services on what has been described as this fictitious sale and this warehousing effort. H.R. Clinton, T. Thrush, B. Donovan, J. Birch, and there's one name I can't quite read. Any of these names mean anything to you?

Ms. BRESLAW. I'm sorry, I thought I heard Donovan. I know a Rick Donovan there.

Mr. CHERTOFF. Rick Donovan, yes. H.R. Clinton—she has a copy in front of her.

The CHAIRMAN. Do you have a copy of this in front of you? There is a folder. All of this we provide for you so that you will not have to—why don't you get that. It's a one-page document.

Ms. BRESLAW. I'm sorry, sir. It's the very last document.

Mr. CHERTOFF. Do you have it now?

Ms. BRESLAW. Yes, sir.

Mr. CHERTOFF. Let's read along together here. It says, "For legal services rendered through January 30, 1986 by H.R. Clinton, Hillary Rodham Clinton, T. Thrush," I think it's R. Donovan, R., and I can't read the other word, and then J. Birch. Do you see that?

Ms. BRESLAW. Yes, sir.

Mr. CHERTOFF. Had you seen that at any time when you were dealing with the issue of whether the Rose Law Firm should be recused?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. The nature of this transaction as it was described in the Federal Home Loan Bank Board examination was that at the same time that the bank was purchasing part of the property, they were giving Ward the money to purchase the rest of the property and taking an option to get it back later. All of that paperwork of that fictitious transaction which described as—essentially as a fraud in the bank examination report, all that paperwork regarding that transaction was handled by the Rose Law Firm.

Would you agree with me that had that been brought to your attention, it would have been absolutely ridiculous to hire the Rose Law Firm to represent the RTC in a case involving the independent auditors?

Ms. BRESLAW. If this had been raised to me, then I would have considered it a matter that had to be reported to my supervisors. The way these things normally go is that the firm has the opportunity to seek a waiver. If they wanted to seek one, that would have been considered by my supervisors and it may not have been granted, but—excuse me.

Mr. CHERTOFF. If they had asked you for your opinion, would you have said, look, this law firm was intimately involved in a transaction which has been described as a fraudulent transaction, and it's inevitable that in litigation with the outside auditors, when they say, hey, look, it's not our fault, it's the management of the bank that was corrupt, they would be looking at the very fraudulent transaction that the Rose Law Firm was involved in expediting? Would you have said that makes it an intolerable conflict?

Ms. BRESLAW. Probably.

Mr. CHERTOFF. Mr. Hubbell never mentioned any of this to you, did he?

Ms. BRESLAW. That's correct.

Mr. CHERTOFF. Did Mr. Hubbell tell you that his law firm, the Rose Law Firm, had also been involved at the very same time period in seeking permission from the Arkansas securities department to have the bank issue additional stock?

Ms. BRESLAW. No, sir, he——

Mr. CHERTOFF. Did he tell you that in the course of that representation, the Rose Law Firm actually relied upon the Frost reports as support before the banking department in order to have the banking department or the securities department bless this stock issue?

Ms. BRESLAW. No, he did not tell me that.

Mr. CHERTOFF. Wouldn't that be yet an additional reason not to hire the Rose Law Firm?

Ms. BRESLAW. That one I think poses more of a close question because I don't think that the lawyers are responsible for the work of the auditors. In other words, if they simply attached the audits as copies to material submitted to the Arkansas regulators, I guess in my mind that does not mean that the lawyers are responsible for the auditors' work.

Mr. CHERTOFF. You would want to have known about that when you talked to Mr. Hubbell about this business of his relationship with Mr. Ward?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. Now, I really want to hone in on this, because here it is, you have presumably called Mr. Hubbell up and you said to him, look, Mr. Hubbell, I now understand you have a relationship with someone who has got some kind of litigation with Madison, and of course that is the very litigation that arose out of this corrupt arrangement that the bank examiners talked about. What did Mr. Hubbell say to you?

Ms. BRESLAW. Well, as best as I can recall, he assured me that he did not represent Ward and that he had not represented Ward and that he would not represent Ward. So I came out of that conversation believing that there was no conflict because it was my understanding that he did not represent Mr. Ward at all.

Mr. CHERTOFF. He didn't say anything about this fictitious purchase or this representation before the securities department, even though you had specifically called him to say, hey, there is something here that just came up that casts a cloud over your representation?

Ms. BRESLAW. He did not disclose those, no.

Mr. CHERTOFF. When did you learn that there were these other problems with the representation by Rose?

Ms. BRESLAW. Well, let me think. Could you identify for me what you mean when you say, "these other problems," sir?

Mr. CHERTOFF. When did you learn that there was a 1986 examination report that indicated that Seth Ward was right in the middle of this fraudulent transaction?

Ms. BRESLAW. I don't remember.

Mr. CHERTOFF. When did you learn that the Rose Law Firm was involved as having been the lawyers who handled this transaction?

Ms. BRESLAW. Either you are telling me this for the first time now, or—I have the rough sense that when the Inspectors General testified last summer on the House side, something to this effect was raised, but I am not sure that I understood at that time the details that you've described. Clearly it was not during the time in which the accounting case was pending.

Mr. CHERTOFF. Now, you raise the Inspectors General who testified about that, and I want to give credit where credit is due. This was uncovered by the RTC Inspector General's Office; right?

Ms. BRESLAW. I think so.

Mr. CHERTOFF. That's when they did a review of the RTC conflict issue with the Rose Law Firm; right?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. You opposed that review, didn't you?

Ms. BRESLAW. No.

Mr. CHERTOFF. Didn't you say that it was the FDIC that should be doing the review of its own decisionmaking regarding this conflict?

Ms. BRESLAW. I think that you're blurring together remarks or comments I may have made at different times. As I believe you know, I have fully cooperated with really everybody who has investigated this. I have given three sworn statements to the RTC Inspectors General and FDIC Inspectors General, and I would not at all say that I opposed their review. In—well, go ahead.

Mr. CHERTOFF. Let's go back in time to 1994. You raised the issue during your statement of the memo by Investigator Davidson of your January 11 conversation with him regarding his conducting an investigation into possible civil fraud claims. If we can put this up on the Elmo, and I know we have a copy in front of you.

Ms. BRESLAW. I'm sorry, sir, what document?

Mr. CHERTOFF. The document dated February 18, 1994, from Gary Davidson which you had mentioned in your opening statement.

The CHAIRMAN. Top of it says RTC.

Ms. BRESLAW. Yes, sir, I have it now.

Mr. CHERTOFF. Now, you see there that it says in the end of the first paragraph:

On January 13 or 14, I called the assigned PLS attorney, April Breslaw, for the purpose of asking whether she knew of any fraudulent activity that was not addressed in the criminal referrals.

Is that true?

Ms. BRESLAW. I don't believe that Davidson asked me that, no.

Mr. CHERTOFF. So you think that that statement in his memo that he wrote was incorrect, he didn't ask you that?

Ms. BRESLAW. That's correct.

Mr. CHERTOFF. Did he call you?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. He says:

Now, before I could ask my intended question, April asked if I was conducting an investigation into Madison Guaranty. After acknowledging that I was, she indicated that what she was about to tell me was being stated as politely as she could. April felt I should know there are some RTC people in management positions that would take a "dim view" of me investigating Madison Guaranty.

Did you say that?

Ms. BRESLAW. No.

Mr. CHERTOFF. Positive you didn't say that?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. Continuing:

She also advised that I should be very careful of who I talked to and what I say because of the people associated with Madison Guaranty.

Did you say that?

Ms. BRESLAW. No. Well, sir, let me be clear. I believe that reference pertains to me cautioning Mr. Davidson to be careful about speaking with the press.

Mr. CHERTOFF. So you do remember cautioning him but only about speaking to the press?

Ms. BRESLAW. That's my recollection, sir.

Mr. CHERTOFF. You deny having indicated that there were people who would take a dim view of him investigating Madison Guaranty?

Ms. BRESLAW. Sir, as I think it says in my statement, to the best of my recollection, I explained to him that the FDIC at that time was taking a serious look at Rose Law Firm issues because the Rose Law Firm was hired to work on the accounting case before the RTC was even created; in fact, it was an FDIC hiring decision.

So I believe the context of the conversation was Davidson asking questions about the Rose Law Firm, me explaining to Davidson that the FDIC was doing a responsible look at this matter and me—excuse me, sir—and me suggesting to him that it was not necessary for him to get involved in this because FDIC people were working on.

Mr. CHERTOFF. Did you work for the FDIC at that time?

Ms. BRESLAW. Technically yes.

Mr. CHERTOFF. But you were assigned to the RTC.

Ms. BRESLAW. That's true.

Mr. CHERTOFF. Were you speaking on behalf of the FDIC in telling Mr. Davidson to back off on investigating the Rose Law Firm?

Ms. BRESLAW. I don't think I told him to back off, but it was my opinion, and continues to be, that it was not appropriate for someone like Mr. Davidson, who to my knowledge has no training in legal ethics and no knowledge of contracting procedures, to be attempting to engage in some kind of review of the hiring of the Rose Law Firm.

Mr. CHERTOFF. That review involved, among other things, your conduct; right?

Ms. BRESLAW. To some extent.

Mr. CHERTOFF. What you were telling Mr. Davidson was that he should defer to the FDIC on investigating your own conduct; right?

Ms. BRESLAW. Sure.

Mr. CHERTOFF. The FDIC, by the way, when it put its report out whitewashed this thing, didn't find a conflict; right?

Ms. BRESLAW. I wouldn't characterize their report as a whitewash. They made whatever findings they made.

Mr. CHERTOFF. Then the RTC Inspector General came up with this 1986 bank examination report that indicated in fact there was a powerful conflict because the Rose Law Firm had been directly involved in a transaction that was a fraud in the case; right? That was the RTC that discovered that, not the FDIC?

Ms. BRESLAW. Well, sir, my understanding is that the Inspectors General at the FDIC and RTC did their work together. It has been my understanding that the reports that were issued this summer were issued jointly by the FDIC and RTC Inspectors General.

Mr. CHERTOFF. Wasn't there an earlier FDIC report which found no conflict of interest?

Ms. BRESLAW. The Legal Division in the FDIC did issue a report and it was that project that I was thinking of at the time. I haven't looked at that report in quite some time.

Mr. CHERTOFF. That one finds no conflict. It's the later report which the RTC was involved in that uncovers the nature of what this transaction was; correct?

Ms. BRESLAW. If you say so. I do not have the document in front of me.

Mr. CHERTOFF. All right. We've established that you asked or suggested to Mr. Davidson that he ought to defer to the FDIC on the issue of investigating, among other things, your own conduct. That's not the only person you asked to do that, isn't that correct?

Ms. BRESLAW. I don't recall.

Mr. CHERTOFF. You then got on the E-mail system and wrote a letter to Jim Thompson in Kansas City. Who is that?

Ms. BRESLAW. Thompson has had different positions at different times. He, I believe, has always occupied some form of management job in Kansas.

Mr. CHERTOFF. Well, there's an E-mail we have in front of you, it's headed "James G. Thompson" from you, January 12, 1994, 10:00. That's the day after your conversation with Mr. Davidson.

Ms. BRESLAW. Excuse me, if I could just find that, sir.

Mr. CHERTOFF. Sure. Do you have that?

Ms. BRESLAW. I think, yes.

Mr. CHERTOFF. The first paragraph says, "It's my understanding that Kansas investigations has attempted to evaluate the decision to hire the Rose Law Firm to represent the Government against Frost & Company right?"

Ms. BRESLAW. That's what the document says.

Mr. CHERTOFF. That again is your decision that's being investigated; right?

Ms. BRESLAW. Yes.

Mr. CHERTOFF. This is the day after you have your conversation with Mr. Davidson suggesting to him that RTC shouldn't be doing this, they should let the FDIC, your old agency, do it, do this investigation?

Ms. BRESLAW. Well, sir, I would observe that the date of this E-mail is January 12. According to Mr. Davidson's memo, the conversation occurred on either January 13 or 14.

Mr. CHERTOFF. So the day before, you're right, you got me.

Ms. BRESLAW. I don't mean to play gotcha, but I think this only illustrates that everybody's recollection can slip, apparently even Mr. Davidson's.

Mr. CHERTOFF. No, I don't think—I think Mr. Davidson is discussing another conversation. He's discussing a conversation he had on the 13th and the 14th. This is an E-mail you had with Mr. Thompson.

Now, you go on to say in the last paragraph, "You should be aware that the FDIC is conducting its own investigation of this matter. Trial attorneys from their special litigation unit are in the process of both evaluating relevant documents and interviewing witnesses. By all indications, this project is being handled in a professional manner." How did you know that, by the way? Were they consulting you about it?

Ms. BRESLAW. No, sir. I think what I meant was that they had clearly requested documents. I don't remember whether I had been interviewed by that time or not, but then I make the general observation that by the indications that I was familiar with, it seemed like they were doing a professional job.

Mr. CHERTOFF. "When they conclude, they expect to issue a public report. If the public is getting it, it should certainly be available to Kansas legal and investigations. In light of all this, I suggest that investigations discontinue its inquiry into this matter." Again you are suggesting to the RTC that they stop investigating you; correct?

Ms. BRESLAW. I am suggesting that because responsible senior people in the FDIC are already doing this project, that it would be a waste of time for Kansas, and perhaps inappropriate, for the Kansas investigators who, to my knowledge, had no training in legal ethics to conduct their project.

Mr. CHERTOFF. You wanted to pick the people that would investigate you?

Ms. BRESLAW. No, sir. The people had already been picked. The FDIC had already started that project.

Mr. CHERTOFF. Were these people you knew at the FDIC?

Ms. BRESLAW. No, not all of them. Some of them.

Mr. CHERTOFF. Did you know who they were?

Ms. BRESLAW. I knew who was in charge of the project.

Mr. CHERTOFF. Who was that?

Ms. BRESLAW. Jack Smith, Deputy General Counsel.

Mr. CHERTOFF. Did you know him?

Ms. BRESLAW. I had been introduced to him. He came from the Federal Home Loan Bank Board, not the FDIC, so I did not know him very well.

Mr. CHERTOFF. The FDIC was your old agency, the agency you were actually part of?

Ms. BRESLAW. Along with 8,000 other people, sure.

Mr. CHERTOFF. And that was the agency which made the original decision through you to hire the Rose Law Firm; right?

Ms. BRESLAW. Sure.

Mr. CHERTOFF. You wanted that agency to be the one to investigate that decision and not the RTC; right?

Ms. BRESLAW. I felt it was legally appropriate for the agency that had made the contracting decision and which knew what its own procedures and rules and policies were at the time the hiring decision was made to look into this.

Mr. CHERTOFF. You are being looked at in this investigation. What possessed you to volunteer who should be doing the investigation? Did someone tell you to do it?

Ms. BRESLAW. Well, first of all, this is phrased in the most polite possible way. I'm making a suggestion. I'm not imposing anything on anybody, but I was offering my own opinion, which I continue to hold, which was that the FDIC, the agency which hired the Rose Law Firm, was the appropriate agency to evaluate this matter.

Mr. CHERTOFF. You had a real personal interest in who was going to conduct the investigation of your decision to hire the Rose Law Firm in spite of a conflict of interest which we now understand was—actually should have been fully evident had you looked at the 1986 examination report; correct?

Ms. BRESLAW. I don't know if I would go that far, sir. I have lost the beginning of your question.

Mr. CHERTOFF. You were very concerned about who was going to conduct the investigation into your decision to hire the Rose Law

Firm in spite of a conflict that was fully disclosed as of the 1986 bank examination report; correct?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. You weren't interested?

Ms. BRESLAW. There's a big difference between being interested and being the way you characterized it in the beginning of the question. I continue to believe that the appropriate entity to look into this was the FDIC. I did not choose the people who worked on the FDIC investigation. I had no reason to think that the FDIC would investigate me any less harshly than anybody else.

I would also say with regard to that examination, I think the record should reflect that during 1989, I had 60 institutions assigned to me, I had a huge volume of work, so, you know, the examination says what it says, but the suggestion that somehow I missed something in the exam report I think is a little bit unfair.

Mr. CHERTOFF. Now, it was your decision to volunteer to both Mr. Davidson, and then on this E-mail to Mr. Thompson, your opinion about the way they should investigate you. Let's go forward 2 weeks.

Ms. BRESLAW. I'm sorry, wait a minute. I didn't understand what you just said.

Mr. CHERTOFF. Did anyone ask you who should do this investigation, or did you get on this E-mail of your own volition to volunteer your suggestion?

Ms. BRESLAW. I voluntarily——

Mr. CHERTOFF. Put your 2 cents in?

Ms. BRESLAW. Right.

Mr. CHERTOFF. Two weeks later you're over in Kansas City and you're with Ms. Lewis, and you've heard the tape. Do you now acknowledge it is your voice on the tape?

Ms. BRESLAW. I'm not sure.

Mr. CHERTOFF. You're not sure?

Ms. BRESLAW. To me the quality of the tape is not great.

Mr. CHERTOFF. You've heard the tape, you hear Ms. Lewis say "April" at one point in the tape, you know you were there. Do you really have a doubt at this point that it's you on the tape?

Ms. BRESLAW. I don't know what to think.

Mr. CHERTOFF. You don't know whether it's you on the tape?

Ms. BRESLAW. I'm not sure.

The CHAIRMAN. Do you want us to play it for you?

Mr. CHERTOFF. Play just a little——

The CHAIRMAN. I mean really.

Ms. BRESLAW. Ms. Lewis has——

The CHAIRMAN. It's painful enough to listen to people who don't remember things they wrote in their diary. Now to suggest—and you watched part of this yesterday, didn't you?

Ms. BRESLAW. Yes.

The CHAIRMAN. You watched Ms. Lewis testify. You heard the tape. You have a copy of the transcript. Doesn't that comport with the things that you see in the transcript, with your meeting with Ms. Lewis, or was this all made up? Maybe she didn't make a secret taping of you and her. She made it with somebody else impersonating you. Is that what you suggest?

Ms. BRESLAW. No, sir. Ms. Lewis has taken responsibility for doing that, so I defer to it. I think Mr. Chertoff's question was whether I recognized the voice. I cannot authenticate the tape, but if she says she did it, then that's fine.

The CHAIRMAN. This is really painful, but if you want to do that to ascertain, we will play a part of the tape and maybe you will listen and it will jog you or your——

[The audiotape was played.]

The CHAIRMAN. Is this you?

Ms. BRESLAW. I'm not——

The CHAIRMAN. You can stop that now.

[The audiotape was played.]

Mr. CHERTOFF. Is that your voice?

Ms. BRESLAW. I don't know what my voice sounds like on the tape, or on a tape.

Mr. CHERTOFF. Why on earth would you say to Ms. Lewis—and whether or not you like the fact she taped you, was legal for her to do, wasn't a violation of the law—why would you say to her that the——

The CHAIRMAN. This is incredulous, it really is incredulous. It is absolutely unbelievable. We have really hit a new one. I thought the diary thing where the guy didn't remember was one of the best, he lied to his diary.

Mr. CHERTOFF. Why would you say to Ms. Lewis that the head people want this to come out a certain way? What would be the valid investigative reason to suggest that if it could be done "honestly," you would want to have this come out a certain way? Can you think of any valid reason to say that?

Ms. BRESLAW. First of all, as I have told you before, I do not remember saying that, so I really cannot respond to that question.

Mr. CHERTOFF. What about later in the tape where we have the comment, this is at page 66, "Well, like I said, I feel self-conscious asking that, because in some ways it's kind of a silly question, but you know, it's the kind of thing that they're looking for what they can say, and I do believe they want to say something honest. I don't believe at all, and I don't want to suggest at all, that they want us to reach a certain conclusion. I really don't get that feeling, but happier than others because it would get them off the hook." What would be the valid investigative reason to convey to another investigator that they want an honest answer but they would really kind of like it a certain way? Can you think of any valid investigative reason to say that?

Ms. BRESLAW. Jean Lewis was not a part of the civil investigation so I will not accept the characterization of her as another investigator. Again, the impetus of your question or focus of your question seems to be the suggestion that somehow I was attempting to influence Jean Lewis. I do not accept that fundamental premise of the question because she was not someone who was capable of being influenced because she was not a participant in the investigation.

Mr. CHERTOFF. Then why would you say it to her?

Ms. BRESLAW. Why would I say what?

Mr. CHERTOFF. Why would you say things to her like they would kind of like to have it come out a certain way? You said it.

Ms. BRESLAW. I think that that commentary tends to show how casual the conversation was, and again, as I have testified, my recollection of the conversation is spotty. What's difficult here is that you're asking me really to speculate about what might have been in my mind almost 2 years ago——

Mr. CHERTOFF. Who better than you?

Ms. BRESLAW. —during a conversation which I don't remember very well.

Mr. CHERTOFF. Had you spoken to Mr. Hubbell on several occasions before you had this conversation with Ms. Lewis?

Ms. BRESLAW. During what timeframe?

Mr. CHERTOFF. Earlier in the previous year, in September, when it came to light that the Rose Law Firm was going to be investigated, didn't you call him up?

Ms. BRESLAW. I spoke with him once.

Mr. CHERTOFF. You called him up to let him know that there was an issue out there about the Rose Law Firm being investigated, isn't that correct?

Ms. BRESLAW. I called him to tell him that I had received the inquiry from The Washington Post reporter in an effort to get follow-up information which the RTC could provide to the press.

Mr. CHERTOFF. You decided to give him a heads-up; right?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. He was the person, the Associate Attorney General of the United States, out of the Rose Law Firm at that time, you took it on yourself to call that person to say, oh, The Washington Post is making inquiries about the reason I hired you.

Ms. BRESLAW. As you know, sir, I called Richard Donovan, who was the other partner at the Rose Law Firm who worked on the accounting case as well. Those were the two people who had personal knowledge of the accounting case and of the Rose Law Firm's clients, so they were the people who I assumed would have factual information which the RTC could provide in response to press inquiries.

Mr. CHERTOFF. You didn't even wait a day to hear back from Mr. Donovan. As soon as you couldn't get through to Mr. Donovan, you picked up the phone and called Mr. Hubbell; right?

Ms. BRESLAW. My recollection of the telephone tag is not clear, but I don't dispute the fact that I talked to both of them.

Mr. CHERTOFF. You've seen records that you picked up the phone to talk to Donovan, he wasn't there, you left a message, and you picked up the phone to reach out for Hubbell; right?

Ms. BRESLAW. No, sir. I believe that the actual telephone records that I have seen so far show me calling Donovan and there being quite a gap, it was the next morning, at least by the telephone records that I have.

Mr. CHERTOFF. Let me close with this. Do you remember in August 1993, Mr. Hubbell made a visit to your Section, the Professional Liability Section of RTC?

Ms. BRESLAW. I know that he came sometime during that summer but I don't remember the date.

Mr. CHERTOFF. Did you invite him to do that?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. Did he say in the course of that visit that if any RTC individuals should receive demands for document production from the U.S. Attorney's Office which the RTC beliefs is unreasonable, the RTC should feel free to let him know?

Ms. BRESLAW. I don't remember him saying that.

Mr. CHERTOFF. I would like to put this up on the Elmo. This is a Department of Justice E-mail from Mr. Carver, who we heard about yesterday, a career prosecutor. It's dated Friday, August 13, 1993, and it says, just as I said:

He also mentioned that if the RTC should receive demands for document production from the U.S. Attorney's Office, which the RTC believes is unreasonable, the RTC should feel free to let him know.

Now, at that time, Ms. Breslaw, Mr. Hubbell had no responsibility for the U.S. Attorneys. They operated directly under the Deputy, Mr. Heymann. Do you have any understanding of why Mr. Hubbell would interject himself at a meeting with your Section into the question of RTC responding to Federal Grand Jury subpoenas?

Ms. BRESLAW. No, sir.

Mr. CHERTOFF. I see my time is up, Mr. Chairman.

The CHAIRMAN. When the red light goes on, if you are in the process of concluding something we will give you the time necessary to conclude it. That's the way we are attempting to operate. I think that it will make for the process to be one which is more orderly, and I would try to do that within the proper limitations. There were several minutes that it took to get various documents to give Ms. Breslaw an opportunity to respond. We will do the same.

Senator SARBANES. Mr. Chairman, Michael went over about 12 minutes on that. I don't want to make a big thing of it but we would like to go over, or else let's just adhere to the red light. I have consistently suggested that that's what we do.

The CHAIRMAN. I would like to adhere to the red light, but there is also something called an orderly process and we have been pretty good at it—I don't want to nitpick it—and that is to allow the completion of a line of questioning, I think that makes some sense provided it can be done within some reasonable time and that will be accorded to the Minority. I have done that consistently throughout. I don't think anyone can say we have shortchanged anyone. We are not going to do that and so, Senator, you can proceed.

Senator SARBANES. Ms. Yanda, it was suggested—more than suggested here yesterday by witnesses that you impeded or sought to impede the referrals. Now, as I understand it, a policy directive was adopted by the RTC in mid-June 1993, that criminal referrals should be reviewed by the Professional Liability Section; is that correct?

Ms. YANDA. It required the review by the criminal coordinator, who in this case was in the Professional Liability Section, yes, sir.

Senator SARBANES. So when these referrals with respect to Madison were being made, proper procedure required that they be reviewed, I take it, by Ms. Carmichael, who was in your division; is that correct?

Ms. YANDA. Yes, sir, under the June 17, 1993 directive.

Senator SARBANES. My impression is that you reviewed these things in very short order in terms of time; is that correct? I have

great difficulty understanding how anyone could allege that there was an effort to impede or obstruct when, one, you acted pursuant to established agency policy; and two, as I perceive it, at least, acted in a very short time period. In fact, when did you obtain the referrals?

Ms. YANDA. Mr. Phil Adams, the former Federal prosecutor on my unit in the Professional Liability Section in Kansas City, obtained copies of the referrals without exhibits late the afternoon of Friday, September 24, 1993.

Senator SARBANES. When did you conclude the review?

Ms. YANDA. Well, sir, we got copies of the exhibits the following Wednesday and our review was completed within 2 weeks of our receipt of the initial packet of referrals, on October 8, 1993.

Senator SARBANES. Just over a week after you had the full documentation?

Ms. YANDA. Yes, sir. I required Mr. Adams and Ms. Carmichael to literally work around the clock to get their work done. We knew it was going to be an extraordinary task. We knew it would require extraordinary effort by Mr. Adams and Ms. Carmichael. I can recall getting calls from our information services unit, complaining that my staff wasn't turning off their computers at midnight, that they were leaving the office without turning off their computers when, in fact, they were there until 3 a.m. and 4 a.m. in the morning. Of course, they didn't turn off their computers because they were working because I told them they had to meet the 2-week deadline that I agreed to with Mr. Iorio.

Senator SARBANES. OK, thank you.

Mr. Ben-Veniste.

Mr. BEN-VENISTE. Ms. Breslaw, I would like to ask you some questions about the visit that you made on February 2, 1994, to the Kansas City office of the RTC. How long in advance did you know that you were going?

Ms. BRESLAW. Mark Gabrellian appeared at my door at 5 p.m. the previous evening and asked me to go the next day.

Mr. BEN-VENISTE. How long had—Mr. Gabrellian, is it?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Scheduled himself to go and make that visit?

Ms. BRESLAW. I'm sorry?

Mr. BEN-VENISTE. Did you know how long the visit was anticipated in advance of you going?

Ms. BRESLAW. My recollection is that he had been asked by Ellen Kulka to send somebody that day.

Mr. BEN-VENISTE. What was the purpose of your visit?

Ms. BRESLAW. Primarily my purpose was to review the Madison documents that were housed in the Kansas Office of Investigations. If you recall, the winter of 1994 was a very harsh winter and my sense of it was that Ellen Kulka was concerned about delays in shipping the documents from Kansas to Washington. So I already had a series of assignments that I was working on, under other circumstances I would have asked the investigators to send me the paper, but through Mark's request, which I understood to be at Ellen's suggestion, I went to the documents instead of having the documents sent to me.

Mr. BEN-VENISTE. So your purpose was to go there to review documents?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. What time did you arrive in those offices, do you recall?

Ms. BRESLAW. It seems to me that it was about 10:30 a.m.

Mr. BEN-VENISTE. Did you begin the process of reviewing the documents?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Were you invited to lunch by anyone?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Who invited you to lunch?

Ms. BRESLAW. Mr. Iorio.

Mr. BEN-VENISTE. Let me ask you whether at that lunch Mr. Iorio suggested that you imbibe an alcoholic beverage?

Ms. BRESLAW. Yes, he did, sir.

Mr. BEN-VENISTE. Was that a normal workday occurrence for you?

Ms. BRESLAW. No, sir.

Mr. BEN-VENISTE. What was your response?

Ms. BRESLAW. I declined.

Mr. BEN-VENISTE. Did anyone else at that luncheon drink alcoholic beverages?

Ms. BRESLAW. Mr. Iorio himself had a drink.

Mr. BEN-VENISTE. When you returned to the office, about what time was that?

Ms. BRESLAW. It seems to me that we returned about 1:30 p.m. in the afternoon from lunch. I am not sure exactly.

Mr. BEN-VENISTE. Prior to this visit on February 2, 1994, had you ever met Jean Lewis?

Ms. BRESLAW. No, sir.

Mr. BEN-VENISTE. Had you ever spoken to her?

Ms. BRESLAW. I believe we had one brief telephone conversation in January 1994.

Mr. BEN-VENISTE. Did you learn that Jean Lewis wanted to see you for some purpose.

Ms. BRESLAW. My sense of it was more that Mr. Iorio wanted me to meet with her.

Mr. BEN-VENISTE. What did Mr. Iorio say to you in substance about that?

Ms. BRESLAW. He explained that she had worked on the criminal referrals and, therefore, might have factual knowledge that might be relevant to the civil project.

Mr. BEN-VENISTE. What time, if you remember, did he suggest that you meet with Ms. Lewis?

Ms. BRESLAW. It seems to me that several times during the day he suggested that I meet with Ms. Lewis.

Mr. BEN-VENISTE. Where physically were you located while you were reviewing the documents?

Ms. BRESLAW. In a conference room.

Mr. BEN-VENISTE. Were there other chairs in the conference room.

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Was there some reason, as far as you knew, why Ms. Lewis, if she had wanted to speak with you, couldn't come to the conference room for that purpose?

Ms. BRESLAW. No, there would be no reason.

Mr. BEN-VENISTE. Did there come a time when Mr. Iorio escorted you to Ms. Lewis' office?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Tell us about the circumstances of that.

Ms. BRESLAW. Well, sir, I finished my document review late in the afternoon. I had a little bit of time before I had to catch a plane back to Washington, so at that point I believe I went to Mr. Iorio and told him that I had finished the work I had come to do, and that if there were people he wanted me to speak with, we could do that. I believe he first escorted me to Ken Foust's office and then left, Mr. Foust and I had a conversation. I believe Mr. Iorio returned and escorted me to Ms. Lewis' office and then left.

Mr. BEN-VENISTE. All right. Now, let us presume that you were taped, as it seems obvious to me that you were, on February 2, 1994. Clearly, you were not told by Ms. Lewis that she was recording your conversation.

Ms. BRESLAW. That's true.

Mr. BEN-VENISTE. You had no reason to expect that Ms. Lewis would record your conversation?

Ms. BRESLAW. No, sir.

Mr. BEN-VENISTE. Do you recall that during the conversation Ms. Lewis asked you to sit in a particular place, and that Ms. Lewis and you sat on the same side of the disk, that is the visitor's side of the desk?

Ms. BRESLAW. My recollection is that Jean Lewis had a very definite idea about where in the room she wanted me to be. I believe that when I came into her office she was not there, that she arrived shortly afterwards, and that I had been standing near her desk, but that she ushered me to a small grouping of furniture at the other end of the office, where more casual furniture was arranged.

Mr. BEN-VENISTE. My colleague, Mr. Chertoff, has suggested in questions to you that it was not illegal in the State of Missouri for one individual to tape record another without that individual's knowledge, and I believe that is a correct statement of the law. With respect to the ethics of the situation, however, of one professional tape recording a colleague, do you know of any statement of the appropriateness of such conduct in your agency?

Ms. BRESLAW. Well, sir, thankfully we don't have frequent situations where one employee is bugging a conversation. My understanding is that it is a violation of a lawyer's ethics for a lawyer to tape record a conversation without someone else's knowledge. It is my understanding that there are Federal rules that apply if one is attempting to record a telephone conversation that might cross State lines. Otherwise, I believe that we rely on the laws of the State in which the incident occurs.

Senator SARBANES. Senator Moseley-Braun, did you want to——

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Yes, I would like to pursue this line with Mr. Ben-Veniste. I had some questions of the witness I want-

ed to ask, so before you move on from this line of questioning, I would like to——

Mr. BEN-VENISTE. Surely. I wanted to just make one reference and that was from Ms. Lewis' testimony, which we would have discussed, had her appearance continued yesterday. At page 237 of her deposition:

Mr. BEN-VENISTE. Has anyone ever told you about whether it is appropriate to tape record a colleague without that colleagues' knowledge?

Ms. LEWIS. There have been comments made to that effect since that time, yes.

Mr. BEN-VENISTE. Who told you that?

Ms. LEWIS. I reference comments made during the August hearings in which Mr. Leach characterized it as an inappropriately taped conversation.

Senator MOSELEY-BRAUN. Thank you. I was interested in this particular situation. How long had you known Ms. Lewis?

Ms. BRESLAW. I had never met her before.

Senator MOSELEY-BRAUN. So this was your first time going into her office to talk with her?

Ms. BRESLAW. To be very clear, I believe Mr. Iorio introduced us earlier in the day, but the conversation with her at the end of the day was the first time I ever sat down with her.

Senator MOSELEY-BRAUN. Was it a practice in the agency to record conversations with either clients, lawyers, or visitors who came in?

Ms. BRESLAW. No.

Senator MOSELEY-BRAUN. And certainly not a practice to do it with co-workers?

Ms. BRESLAW. Absolutely not.

Senator MOSELEY-BRAUN. I was wondering whether there was any reason that you would have had—to know that there was some problem with your relationship with Ms. Lewis that would give her the rise to secretly tape your conversation.

Ms. BRESLAW. No, ma'am. I think that's one of the more disturbing aspects of this situation. I remain at a loss to understand why, if she did tape the conversation, she would do that to someone that she didn't know, and had no prior experience with.

Senator MOSELEY-BRAUN. When did you first find out about the taped conversation?

Ms. BRESLAW. In the spring of 1994, there began to be reports in the press that the conversation had been taped. At that time, I really did not know if those reports were true or not. I certainly did not have the tape and nobody had suggested that to me before that time.

Senator MOSELEY-BRAUN. How did you feel about it when you found out?

Ms. BRESLAW. Shocked.

Senator MOSELEY-BRAUN. How do you feel about it now?

Ms. BRESLAW. I continue to think that it demonstrates unprofessional behavior on her part. I think it's very unfortunate in an organization such as the RTC, in which we constantly have situations where we have to deal with other people in the agency, all over the country, it does happen all the time, that for one reason or another we have to deal with people that we don't know or don't know well, and I think this kind of incident has a horribly chilling

effect on our ability to handle matters within the agency, if you are concerned that people might do something this outrageous.

Senator MOSELEY-BRAUN. Thank you, Mr. Ben-Veniste.

Thank you, Ms. Breslaw.

Mr. BEN-VENISTE. I would like to turn to an area in the conversation that Ms. Lewis has repeatedly characterized under oath in a particular way. I would start with Ms. Lewis' statement before the House of Representatives on August 8, 1995, at page 57, where she says, "It is clear that Ms. Breslaw was there to deliver a message that," and then she puts in quotation marks, capital T, "'The people at the top would like to be able to say Whitewater did not cause a loss to Madison,'" and she says, "In those words."

Then, in her deposition before this Committee, at page 292, she said in response to this:

Question: But you left out the part where Ms. Breslaw prefaced that thought with the notion that the people at the top would like to be able to say it honestly; do you remember that?

Answer: I remember I did not incorporate the entirety of the quote into my testimony.

Question: Was there some reason why you felt that you would be accurate if you left out the part about honesty?

Answer: I utilized the quotation to best exemplify my thoughts, my feelings, and my reasons on the subject.

Question: Well, let me ask you again whether you felt that you would be fairly communicating what Ms. Breslaw said to you if you left out the part about the top people wanting to be able to say something if they could say it honestly.

Answer: Yes.

Question: And that was a conscious decision on your part?

Answer: That's correct.

And then, yesterday, remarkably, in her opening statement, again, Ms. Lewis says at page 22, "It is clear that Ms. Breslaw was there to deliver a message that, 'The people at the top would like to be able to say Whitewater did not cause a loss to Madison.'" Again, leaving out the preface, which we have and I will read for you, for your benefit, at page 59 of the transcript provided to us, which is, "I think, if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison."

Now, in your mind, is there a distinction between a message being delivered that, "The top people at your agency want it to be said that Whitewater did not cause a loss to Madison," and a statement, "I think, if they can say so honestly, that would be their hope."?

Ms. BRESLAW. Yes, sir, I think that those two statements are very different. I think that the caution about honesty is very important, because it emphasizes the fact that honest answers were sought, and that no one had any predetermined idea about the outcome that was preferred.

Mr. BEN-VENISTE. Now, when you prefaced your remarks by saying, "I think, if they could say so, if it could be said honestly, that the head people," et cetera, you've testified in response to Mr. Chertoff's questions that you had no conversations with either of these two individuals about the subject, so in that context what did you mean by, "I think"?

Ms. BRESLAW. Again, sir, I don't remember specifically saying that. But, I think it is apparent that when a person says I think, that suggests that the person is speculating.

Mr. BEN-VENISTE. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Mr. Ben-Veniste.

Ms. Breslaw, just to make the record a little more complete here. Further on in the transcript of the tape—of the conversation with Ms. Lewis, from February 2, 1994, beginning at the bottom of page 66, you are quoted as saying the following: "And I do believe they want to say something honest. I don't believe at all, and I don't want to suggest at all that they want us to reach a certain conclusion. I really don't get that feeling." That's just the other reference in the transcript to the word honest.

Ms. BRESLAW. I would observe, sir, that I believe that this last passage was completely omitted from the notes that were used to support Congressman Leach's floor statement in March 1994.

Mr. KRAVITZ. I believe that's correct.

Ms. Yanda, if I could ask you a few questions. What is your position within the RTC in the Kansas City field office?

Ms. YANDA. My current position is Senior Counsel of the Professional Liability Section for the Kansas City office.

Mr. KRAVITZ. Was that your position in the fall of 1993?

Ms. YANDA. No, sir.

Mr. KRAVITZ. What was your position at that time?

Ms. YANDA. I was the Section Chief for the Professional Liability Section in Kansas City.

Mr. KRAVITZ. Ms. Carmichael, what was your position in the fall of 1993?

Ms. CARMICHAEL. I was the Senior Attorney for the Professional Liability Section and I was also the Criminal Coordinator of the Legal Division for the Kansas City office.

Mr. KRAVITZ. Ms. Yanda, yesterday several Members of this Committee indicated that evidence of Ms. Lewis' political motivations and biases would be more clearly relevant to this Committee's inquiry if that evidence was combined with evidence that Ms. Lewis was leaking information about the Madison case to the press or other individuals. Did you ever become aware that Ms. Lewis was leaking information about the Madison case to the press?

Ms. YANDA. I personally was not made aware of that. I was told that by Mr. Richard Iorio.

Mr. KRAVITZ. And Mr. Iorio, is it correct to say that he held the analogous position in the Office of Investigations to the position that you held in the Professional Liabilities Section?

Ms. YANDA. Yes, sir, he was the Field Investigative Officer in charge of the Kansas City Investigative Unit.

Mr. KRAVITZ. When did you have this conversation with Mr. Iorio?

Ms. YANDA. In the spring of 1994.

Mr. KRAVITZ. What did Mr. Iorio tell you about Ms. Lewis' providing information about the Madison case to the press?

Ms. YANDA. Sir, I have to set this in context for you and the Members of this Committee. About this time, there was an extraordinary amount of press coverage in the Kansas City area, specifically in the Kansas City Star, our local newspaper, concerning Ms.

Lewis, the Whitewater investigation that she was working on, and specifically it was quoting extensively from the referrals themselves.

I and the lawyers in my office were extremely concerned about this, because now we are aware that there was tape recording going on in the investigative unit, and we are aware that there are leaks to the press in the investigative unit that were allowing the local newspaper to have extraordinary coverage of documents that we believed to be highly confidential, and were to be safeguarded.

In that context, I called Mr. Iorio and I asked him to meet with me, and to set up a series of meetings on a regular basis. There was a very chilling effect in my office that was having an extraordinary impact on the morale of my staff, and from what I understood to be extremely low morale in the investigative unit at this very time.

The newspapers are going crazy; they are covering everything related to Whitewater, it is in our hometown, and I've got lawyers who are saying, I'm not going over there, these people are taping us. How do we know who to trust? The only way I knew to instill a sense of calmness, and a sense of trust, to start that effort at retrusting each other again was by example. I was scared to death myself. I didn't know anymore who over there was going to record what, what they were going to tell to the press if we did talk to them. But I had to show my staff that we have a job to do, we have to remain focused, and we have to get our job done, irrespective of these concerns. We had professional obligations we had to fulfill.

So in that context, I asked Mr. Iorio for a meeting and in that meeting I told him just what I have told you now: My folks are scared and they have good reason to be scared. And in that context, Mr. Iorio said, I know Ms. Lewis is leaking information to the press or talking to the press. I don't recall the exact words.

Mr. KRAVITZ. Did Mr. Iorio provide any additional details about Ms. Lewis' leaks?

Ms. YANDA. No, sir.

Mr. KRAVITZ. Just to be clear, as of that time, spring of 1994, the contents of criminal referrals in the Madison case, were they still confidential? Were they still meant to be confidential by the RTC?

Ms. YANDA. It is my understanding that they should have remained confidential.

Mr. KRAVITZ. Certainly not your understanding that the RTC had released publicly the criminal referrals at that time, is it?

Ms. YANDA. That was not my understanding.

Mr. KRAVITZ. Did you ever become aware yourself that Ms. Lewis had been asked to edit a newspaper article before the article's publication?

Ms. YANDA. I was told that.

Mr. KRAVITZ. What were you told about that?

Ms. YANDA. An investigator called me just to report exactly what you said.

Mr. KRAVITZ. What exactly did the investigator inform you of?

Ms. YANDA. There was a draft of a Scripps Howard news article that had come in to Ms. Lewis on the investigative fax machine.

Mr. KRAVITZ. Ms. Yanda, yesterday, both Ms. Lewis and Mr. Iorio testified, I think more than once, about an award that Ms.

Lewis was given by the RTC or within the RTC for her work in the Madison case, and Mr. Iorio testified, I think very carefully, yesterday that the award had been provided to Ms. Lewis by the office of Vice President Dennis Cavinaw. First, who is Mr. Cavinaw?

Ms. YANDA. Mr. Cavinaw at what point in time, sir?

Mr. KRAVITZ. In 1994?

Ms. YANDA. In 1994, Mr. Cavinaw would have been the Vice President of the Kansas City office.

Mr. KRAVITZ. Do you know anything about how Ms. Lewis received a—I think what's called a time off award, from the office of Vice President Cavinaw, relating to her work in the Madison case?

Ms. YANDA. I received several phone calls concerning that award, yes, sir.

Mr. KRAVITZ. What did you learn about the way in which Ms. Lewis received that award?

Ms. YANDA. Mr. Glenn Penrose, who was our Acting Vice President in the Kansas City office, called to tell me that he had been asked to sign some time off awards for Ms. Lewis and for several other members of the investigative department. He indicated that he had signed off on those awards, and he had only then found out that Mr. Cavinaw had not, as Mr. Iorio had represented to Mr. Penrose, agreed to sign off on those time off awards before Mr. Cavinaw left the office.

Mr. KRAVITZ. Just so the record is clear, am I correct that what you learned is that initially, Mr. Iorio went to Mr. Cavinaw himself and sought Mr. Cavinaw's approval for the time off awards and then Mr. Cavinaw declined to grant that approval?

Ms. YANDA. I only know that because Mr. Cavinaw told me it happened.

Mr. KRAVITZ. So Mr. Cavinaw specifically told you he had been approached by Mr. Iorio, and that he had told Mr. Iorio that he would not authorize the awards?

Ms. YANDA. At that time, that's right.

Mr. KRAVITZ. At some later time, I think you testified in your deposition, Mr. Cavinaw was on leave and Mr. Iorio went to the person who was acting in Mr. Cavinaw's place as the Vice President?

Ms. YANDA. No, sir. Mr. Cavinaw was on extended detail, not leave, to Washington, DC, for most of the spring of that year.

Mr. KRAVITZ. OK. So Mr. Cavinaw was out of the Kansas City office and someone was acting in his place as Vice President?

Ms. YANDA. Mr. Glenn Penrose was acting in his place.

Mr. KRAVITZ. Mr. Iorio went to Mr. Penrose and told Mr. Penrose that Mr. Iorio had authorized those awards when, in fact, he had not?

Ms. YANDA. No, sir. It's Mr. Cavinaw who Mr. Iorio represented had approved the awards. He just wasn't around to sign them, and he represented that, according to Mr. Penrose, and based on that representation, Mr. Penrose approved the awards.

Mr. KRAVITZ. You now know, from what Mr. Cavinaw told you, that that was a misrepresentation by Mr. Iorio; is that correct?

Ms. YANDA. I know that it was an incorrect representation.

The CHAIRMAN. Counsel, you have the red light on. If you want to pursue afterwards. We are going to go to 10 minutes and then we will come back for 10 minutes.

Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Thank you very much, Mr. Chairman. There are a number of things I want to cover but let me follow up with Ms. Yanda.

You stated that Mr. Iorio had said that he was permitting Jean Lewis to talk to the press; is that your testimony?

Ms. YANDA. No, sir, that's not my testimony.

Senator BOND. That appears in this document that was mentioned the other day—called "The Mishandling of Criminal Referrals," it was prepared by the White House and it quotes you as saying that in Iorio's statement to Julie Yanda that he was permitting Jean Lewis to talk to the press, quote, "It was apparent at the same time that someone was leaking highly confidential information." You did not report that; did Mr. Iorio say to you that he was permitting Jean Lewis to talk to the press?

Ms. YANDA. No, sir. He told me exactly what I have told this panel today and that is that he knew she was leaking or talking to the press.

Senator BOND. He did not say leaking, did he?

Ms. YANDA. Sir——

Senator BOND. Go ahead, please say.

Ms. YANDA. Sir, my notes of that conversation are available to the Members of the panel. I don't have them before me today. But my notes were taken down as Mr. Iorio said the words, so I will defer to whatever my notes characterize as the exact wording that Mr. Iorio used during that conversation.

Senator BOND. Mr. Iorio in his deposition of October 20, 1995, page 121 states:

> *Answer:* No, I don't believe she leaked any information to the press.
> *Question:* Why don't you believe that?
> *Answer:* We maintained a log. Every time we were contacted by the press, we would do a little E-mail and kick it to the public affairs person. You know, they would call you all hours of the day and night, at home, at the office, and many times they would say we don't want you to—don't say a word, but did you know this, and I would go thank you, you need to talk to so-and-so.

Now, that is Mr. Iorio's testimony. Do you have any reason to contradict that view of Mr. Iorio? Do you know any reason that statement would not be true?

Ms. YANDA. Sir, I stand by my contemporaneous notes made during the conversation I had with Mr. Iorio in the spring of 1994.

Senator BOND. You referred to a Scripps Howard article, faxed to Ms. Lewis.

Ms. YANDA. I referred to the fact that an investigator called me and told me about it.

Senator BOND. Did that investigator also tell you what her response was? Did she do anything in response to that fax which she received?

Ms. YANDA. The investigator or Ms. Lewis?

Senator BOND. Ms. Lewis.

Ms. YANDA. No, sir, we did not talk about that.

Senator BOND. It has been previously testified, I believe, that Scripps Howard faxed a story to Ms. Lewis, Ms. Lewis took no action on it.

Ms. YANDA. Actually, sir, what I said was a draft of a Scripps Howard news article.

Senator BOND. A draft of the news article. So the fact that we have no information and you have no further information that she responded in any way to it, do you?

Ms. YANDA. No, sir.

Senator BOND. I wanted to make that clear. Frankly, there has been a great effort here to attack Ms. Lewis and her motivation. I think it is important to note that the innuendo that have been raised are not based on any evidence that there was any leakage. If she were leaking—let me ask you a hypothetical question. Would not someone wishing to leak a blockbuster have leaked the contents of criminal referral C0004, prior to the November 1992 elections?

Ms. YANDA. Sir, I have no way to respond to that question.

Senator BOND. All right, I understand that and I accept that answer. But if there were a question of leaking, one would expect that the leaking would have covered this very important item. There is no evidence on that.

Let me turn to Ms. Breslaw. Ms. Breslaw, you have been asked about the memorandum from Gary Davidson, an investigator of civil fraud, who states that you felt that he should know that some RTC people would take a dim view. You have stated previously that you did not intend to convey that to Mr. Davidson.

Ms. BRESLAW. That's correct, sir.

Senator BOND. I believe you said it very politely, was your testimony, you said it politely?

Ms. BRESLAW. Well, no, sir. I'm sorry, I think I've lost your question.

Senator BOND. When you conveyed to Mr. Davidson that he shouldn't really get into the Madison Guaranty, you conveyed that politely; is that what you testified to earlier today?

Ms. BRESLAW. No, I think what I was saying was that Mr. Davidson asked me about Rose Law Firm issues and as to Rose Law Firm issues——

Senator BOND. You said politely.

Ms. BRESLAW. Sure, that someone else was working on it.

Senator BOND. You also state that—was it—did we hear your testimony on the—was that your voice on the tape we heard today and yesterday?

Ms. BRESLAW. You know, sir, I don't want to fight with you. I guess all I can say is that I don't know what I sound like on tape. Jean Lewis has taken responsibility for secretly taping the conversation. So, I don't dispute it.

Mr. BEN-VENISTE. You pointed out the fact in answer to Counsel's question that you said honestly, that they want to be able to say this, and it was also pointed out you say, now, I don't want to suggest that they want this result. Is that correct from your reading of the transcript, if nothing else?

Ms. BRESLAW. I appreciate your phrasing it that way. I think that's what the transcript says.

Senator BOND. You are an experienced investigator, Ms. Breslaw. Have you ever found a case where somebody is trying to influence something where they always put the qualifiers in, saying, now, I don't mean to tell you that this is how the result should come out, I honestly wouldn't want you to say it if you couldn't believe it, and please don't think that I want you to do it, but here is the answer; is it not customary, is it not quite possible that someone wishing to influence an answer or an outcome would phrase it with the qualifiers that would give them a legal loophole to slip out of?

Ms. BRESLAW. Sir, I have never seen anybody do that. Again, I must emphasize that Jean Lewis was not an investigator on the civil project so the premise there is that someone is trying to influence something that she is doing.

Senator BOND. Let's be clear. She was investigating the criminal side; correct?

Ms. BRESLAW. That's my understanding, yes, sir.

Senator BOND. No one is saying she was a civil investigator.

Ms. BRESLAW. She testified she was removed from the criminal project several months before so, to the best of my understanding, she was not an investigator in any capacity on Madison issues at that time.

Senator BOND. Now, you've suggested to us that there was some kind of plot, that Mr. Iorio tried to get you to drink alcohol at lunch and then set you up to come in to Ms. Lewis' office and that she somehow positioned you so you would be tape recorded. Would they have any idea that you would say something like "Kulka and Ryan would like to be able to say that there was no loss caused"—did they have any reason to think that you might say this? How did they know, if they were scheming and plotting as you suggested, that you might say something like this?

Ms. BRESLAW. Sir, first of all, I did not use the word plot or scheme; and second of all, given what's happened, it strikes me as possible that they recorded other conversations. I mean, for all I know this was a routine practice in their office. So, no, they had no reason to think that I would do anything inappropriate because I had never met them before.

Senator BOND. Were there any other instances that you know of where you indicated the RTC management would take a dim view of this?

Ms. BRESLAW. Of what, sir?

Senator BOND. Of Whitewater and Madison being tied together.

Ms. BRESLAW. Not that—no, sir.

Senator BOND. Let me ask to put up on the Elmo MGO 472. This is an E-mail from you dated Tuesday, June 28, 1994, to Mark Gabrellian, perhaps—in which it's stated, "I have the impression we're in the midst of producing documents to the Senate Banking Committee." The second paragraphs begins, "At a personal level I strongly request that everybody be careful not to inadvertently produce anything to do with the Lewis conversation, such production could very well throw me into another situation in which I am blindsided by crazy Members of Congress who are playing to the press. If that happens, I am not going to let myself get slammed. I will start telling my side of the story to the press, and the chips will just have to fall where they may."

I understand your view of the mental condition of the Members of Congress, as well as the motivation. Would you perhaps like to tell us your side of the story?

Ms. BRESLAW. Well, sir, I don't remember particularly what I was thinking when I sent this E-mail.

The CHAIRMAN. You want to hold on just for a moment because what's happening now is that the Senator wants to get an explanation, I would like you to explain, but when I guess somebody says red light, you know, and if we are going to do that——

Senator BOND. OK.

The CHAIRMAN. We will do it, but we are going to come right back to it.

Senator Sarbanes.

Senator SARBANES. Well, I think Ms. Breslaw should be able to answer the question——

The CHAIRMAN. Fine.

Senator SARBANES. —then we should shift over.

That's all, Mr. Chairman.

The CHAIRMAN. OK, but, you know, I am attempting to do this and I have to say that the Chair has, I think, extended and attempts to extend courtesy to all the Members on both sides and I don't want to get into this nitpicking and that's apparently what's beginning to take place here.

Senator SARBANES. Mr. Chairman, let me make this observation. We agreed to certain rules and I think it is probably easier if we follow just those rules. I think the question——

The CHAIRMAN. If we want to do it down to the rules, I can say this to you, I could say that under the rules we are permitted—Senator Bond is permitted to go for 15 minutes.

Senator MOSELEY-BRAUN. If it is my turn, she can answer the question on my time.

The CHAIRMAN. I think in the spirit of comity, if we would work in that way we could proceed and go through—I permitted a time to finish one thought. Now, if you want her to answer the question—I would like her to answer the question—you just tell me. I hope it is not going to be considered an infringement upon the time of any of the Members here.

Senator MOSELEY-BRAUN. No, Mr. Chairman. Thank you for your consideration. It is perfectly all right.

I think Senator Bond has asked a cogent question: What is your side of the story? I am very interested—it seems to me that if I had had my conversation secretly taped by somebody I would be sufficiently concerned to say I want to have a chance to tell my side and let the chips fall—the memorandum or the E-mail makes sense to me, but I would like Ms. Breslaw to give her side of the story, I think it is important.

Ms. BRESLAW. Well, sir and ma'am, I do want to be clear with you that I do not have a clear recollection in my mind about what I was thinking when I sent this E-mail. I believe that in this timeframe, this is June 28, 1994, there were a whole series of stories in the press. To the best of my recollection, the suggestion that the conversation had been taped had already been raised in the press at that time.

To the best of my recollection, the description of the conversation that was circulating in the press at that time was in a manner that was favorable to Jean Lewis, and which omitted some of the important statements that Mr. Ben-Veniste and Mr. Kravitz have gone over with me.

Senator MOSELEY-BRAUN. Like the whole business about honesty, that she had omitted honesty and you wanted that part to be told?

Ms. BRESLAW. Correct. I think what I was thinking at the time was if this starts to blow up again in the press then I will start giving interviews myself and explain my best recollection of the conversation and of my purpose in going to Kansas and the whole story.

Senator MOSELEY-BRAUN. Senator Sarbanes, Mr. Ben-Veniste, you can take the rest of my time. I just wanted her to finish out that thought.

Mr. BEN-VENISTE. We talked about the question of whether there were documents that were properly handled, and inquiries by members of the press, which were properly or not properly handled by Ms. Lewis. Let me ask you, Ms. Yanda, were you aware that Ms. Lewis had some employee of the RTC in Kansas City make an entire copy of her file, including both the 1992 and 1993 criminal referrals, and that she took that material to her home?

Ms. YANDA. Sir, I was not aware that there was the allegation that she had someone copy her files. I heard constant complaints from investigators that Ms. Lewis was taking RTC files home with her, but I did not know what files they were or how she came into contact with them.

Mr. BEN-VENISTE. This is at page 479 of Ms. Lewis' deposition transcript, Mr. Chertoff. Actually, this is a volunteered answer.

Question: Before you do conclude, there is one matter I would like to clarify. I reflected a little further on this last night.

Her deposition went over an extra day because she became ill and we stopped at 5:00 p.m.

I reflected a little further on this last night. The matters with regard to when I asked the clerk in the department to make copies of the referrals and the exhibits for me, I just would like the record to clearly show——

Question: Thank you. What are we talking about now?

Answer: The copies of the referrals and the exhibits I made. I testified yesterday they are ultimately in the possession of my counsel.

Question: Ultimately?

Answer: Yes, that's the matter I wish to clarify. Those copies were made in early November 1992, and I just want to make sure that the record shows that. And I misspoke. It was 1993.

Question: You made copies of the criminal referrals, both the 1992 and 1993 criminal referrals?

Answer: Correct.

Then she made copies of the exhibits.

Did Ms. Lewis tell you or anyone else, to your knowledge, that she was sending all of that confidential material to her private attorney, Mr. Forshey?

Ms. YANDA. No, sir.

Mr. BEN-VENISTE. Was there any appropriate procedure at the RTC for sending confidential RTC documents to a private attorney?

Ms. YANDA. Sir, I don't know about any RTC policy like that.

Mr. BEN-VENISTE. Could there have been, in your view, any approval given, had Ms. Lewis sought approval, for such a thing to have been done?

Ms. YANDA. Sir, I don't know.

Senator MOSELEY-BRAUN. Mr. Ben-Veniste, I would like to—Ms. Yanda, in your statement you mentioned complaints you had gotten regarding Ms. Lewis' handling of RTC documents and her job performance in that regard. You worked with her for about 2 years; is that correct? How long did you work with her and what was——

Ms. YANDA. You referenced my statement. That's what's got me confused here.

Senator MOSELEY-BRAUN. I'm sorry. Let me ask you a straightforward question. How long did you work with Ms. Lewis and what was your impression of her job performance?

Ms. YANDA. Ma'am, to characterize me as working with Ms. Lewis is inaccurate. Ms. Lewis was a line investigator in the investigations unit in Kansas City.

First of all, I was a 35- to 40-minute drive away from where Ms. Lewis worked. I did not supervise or oversee her day-to-day activities. Nor did I interact with her on any kind of regular basis. I was the head of the legal division in Overland Park, Kansas as it pertains to the Professional Liabilities Section. So, only in regards that there was interaction between investigations unit and the PLS unit, primarily from my standpoint with Mr. Iorio, did I "work," in quotes, with Ms. Lewis.

Senator MOSELEY-BRAUN. But you mentioned complaints, that you had gotten complaints about her work. In your statement a minute ago you said you had heard complaints. That's what I am referencing.

Ms. YANDA. I'm sorry. I thought you were talking about my opening statement. I apologize.

In the spring of 1993, there was an institution that my office was responsible for. That institution is known as Paragould, it's an institution out of Arkansas. In that institution, we had several claims being worked on. One that Ms. Lewis was working on, the criminal referrals, and on the civil side, the professional liability side, there were a series of claims under investigation, but the one that became most interactive with Ms. Lewis was relating to a fidelity bond claim. A fidelity bond claim is an insurance policy, if you will, that guarantees—that insures the faithful performance of certain thrift and bank employees, officers, and directors.

Ms. Lewis was working directly with the U.S. Attorney at this time in Arkansas. In the course of her dealings with the U.S. Attorney's Office, they struck a deal for a plea bargain with a target defendant who happened to be a target defendant in our fidelity bond claim and our director and officer claims that we were investigating at the time.

That target defendant entered into a plea bargain which Ms. Lewis worked out with the U.S. Attorney's Office, if you will, where there was no requirement of restitution and there was no requirement for cooperation, standard provisions that PLS gets when we work with U.S. Attorney's Offices in the 24–State region that I am responsible for. Because we did not have a plea bargain that required this target defendant to cooperate with the RTC in its work

on the fidelity bond claim—one of the essential elements that I have to prove as a PLS lawyer to succeed on a fidelity bond claim relates to the issue of discovery. Without that man's testimony, I was seriously lacking in evidence to support the fidelity bond claim that I was responsible for.

The PLS attorney assigned to Paragould was upset, concerned—no, she was downright mad because the agency's interests had not been protected because Ms. Lewis dealt not through PLS, not after consulting with PLS, but directly with the U.S. Attorney. As a result, the U.S. Attorney entered into a plea bargain that my group, the PLS people, tried to correct and say hey, wait a minute, U.S. Attorneys and the RTC work together, we do have some common goals.

Senator MOSELEY-BRAUN. She was not following standard procedure and in so doing ruined an investigation?

Ms. YANDA. Ma'am, I can't characterize it like that. First of all, the policies, if you will, were unstated at this time. But there was an obligation and a requirement, and an expectation that Mr. Iorio and I set for our office, of communication. Communication was key. If you are going to succeed in a professional liability claim and there are criminal aspects to it, you darn well better communicate or somebody is going to mess up the other side. We needed to work together as a team. The team failed in this regard, because we had one member of the team dealing directly with the U.S. Attorney's Office and not protecting the interests of our client, the Resolution Trust Corporation, and the taxpayers for whom we are charged with the responsibility to secure recoveries for the savings and loan bailout crisis.

Ms. Lewis cuts the deal, we go back and try to correct the deal—and believe me, the U.S. Attorney's Office was not going to budge on this. He said look, I have already worked it out with the RTC's representative. I don't have any reason to go back and try to reopen this matter, and he didn't.

Senator MOSELEY-BRAUN. So the taxpayers lost the value of the restitution that would have happened in that regard, that could have happened?

Ms. YANDA. If there was restitution to be gotten they lost the value of that, but more importantly, from my standpoint, it was the diminished value of the fidelity bond claim with the underlying insurance policy that I was not able to collect the full value of.

Senator MOSELEY-BRAUN. Right.

Ms. YANDA. That was the injury that I felt the RTC had sustained.

Now, you asked about the policy. The policy—because of this incident in Paragould, I talked to Mr. Iorio, and then I went to Mr. Thompson and we had a joint meeting between all investigators and all PLS attorneys. At that meeting, and subsequently thereafter, Mr. Thompson made it clear that attorneys were to talk to attorneys, PLS attorneys talk to the U.S. Attorneys, and that investigators were to talk to the FBI. Keep the parity where attorneys talk to attorneys so we know the playing field and the implications and the protection of our client's interests, and at the investigator level they can work with their counterparts at the FBI.

Senator MOSELEY-BRAUN. My time is up because the red light is on, but I think this has been helpful. Thank you very much, Ms. Yanda.

The CHAIRMAN. Have you completed your——

Senator MOSELEY-BRAUN. Well, the red light is on.

The CHAIRMAN. If you want to complete the line of questioning, I think it's appropriate.

Senator MOSELEY-BRAUN. I appreciate the offer, Mr. Chairman. I think the issue has been stated. I don't know if I can make it more of a conclusion.

The CHAIRMAN. Senator Bond.

Senator BOND. Ms. Breslaw, to go back to this E-mail of June 28, 1994, let me be clear, this is an E-mail you sent; is that correct?

Ms. BRESLAW. I believe so, yes, sir.

Senator BOND. Would you tell me who that was to?

Ms. BRESLAW. Mark Gabrellian.

Senator BOND. Gabrellian, thank you very much. Let me make sure I understand. In the first paragraph, you say, "If anybody is considering producing anything, I would like to talk about whether it's responsive to the Committee's request. It's my understanding the Senate rejected amendments which might have brought it into the scope of the hearings."

The reason you said that, of course, is that—in strict compliance with a subpoena or a request, the defense lawyer generally says, is this specifically covered. You wanted to make sure that anything to be produced was specifically covered; is that correct?

Ms. BRESLAW. Yes, sir. I think by accident you omitted the part of the E-mail that says, "If anybody is considering producing anything that has anything to do with my conversation with Jean Lewis." So I agree with you generally but you missed that one little part and that was what I was dealing with.

Senator BOND. Let's start in the second paragraph. Would you explain that first sentence?

Ms. BRESLAW. I asked people to be careful not to inadvertently produce anything that has to do with the Lewis conversation. I think that's——

Senator BOND. What could they produce? What is there that you are fearful they might produce?

Ms. BRESLAW. I really didn't know at the time. Again, this was in the timeframe in which there were reports in the press that the conversation had been recorded, but I didn't know that personally myself. Nobody had played me a tape, nobody had given me a transcript.

I didn't know what management in the RTC had in connection with this. I didn't understand whether, or if, they were looking into this incident. I did not have any further communication with Jean Lewis, so I didn't know if she had given any further information, so I really didn't know.

Senator BOND. But clearly you did not want them to produce anything; is that correct?

Ms. BRESLAW. I wanted them to produce what was responsive, and my understanding was that the conversation was not responsive to the request that was pending at the time. Actually I guess I should be careful to say that I'm asking for people to let me know

if they determine that it is responsive. I'm not saying don't produce it under any circumstances.

Senator BOND. Now, why did you feel that you had to follow that up with what appears to me to be a threat? Is it not a promise that if that happens, you will take certain action?

Ms. BRESLAW. At that point in time, I was very frustrated with the press coverage that was coming out. For one reason or another, and I guess basically because of what had been leaked to the press, the perspective in the press at the time was very negative to me, so I think I was expressing some of that frustration and was just telling people that I had pretty much reached the end of my rope and felt that if this started to come out in the papers again, that I would start talking to the press myself.

Senator BOND. What is it that you would start saying to the press that would be such a problem for the recipients of the memo that they would be sure to comply with your request?

Ms. BRESLAW. I don't have any reason to think that they had any particular problem. Again, as I've said before, what I think I may have been referring to were the statements to the effect that everyone was seeking honest answers and that sort of thing.

I think within the RTC, there have been different policies at different times about whether it's appropriate for staff attorneys, or staff generally, to interact with the press themselves, so I think it was more me alerting people that I might be reaching a point where, as to this particular issue, that I might feel that I needed to defend myself personally.

So I think it's more in the context of the somewhat confused policy in the RTC about whether or not it was OK for staff people to deal with the press at all.

Senator BOND. I think Mr. Chertoff wanted to follow up so I'll yield him the remainder, Mr. Chairman, or yield it back to you.

The CHAIRMAN. I might just ask one thing. You have a copy of the transcripts of the hearing regarding Whitewater conversations between Jean Lewis and April Breslaw in your folder.

Ms. BRESLAW. I'm sorry, the transcript of?

The CHAIRMAN. The recorded conversation.

Ms. BRESLAW. Yes.

The CHAIRMAN. Would you look at page 59, top of the page?

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. Would you read that first sentence?

Ms. BRESLAW. "I think if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say White- water did not cause a loss to Madison."

The CHAIRMAN. Did you make that statement?

Ms. BRESLAW. I don't recall making it.

The CHAIRMAN. This is a transcript of your conversation. You have no recollection of saying, "I think if they can say it honestly"—and you heard it played to you before—"the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison."? Are you suggesting that the person who was recorded was not yourself? I mean, you were in Kansas City on February 2.

Ms. BRESLAW. I was in Kansas City on February 2. My recollection of the conversation generally is vague. I don't know that I

could sit here without this document and recite for you any other part of the conversation either.

The CHAIRMAN. But that's why I gave you the document.

Ms. BRESLAW. Right, and you had me read it.

The CHAIRMAN. That's why we played you the tape.

Ms. BRESLAW. The document says what it says. I don't dispute that. All I'm telling you is that my recollection generally of the conversation is vague.

The CHAIRMAN. What reasonable interpretation other than coming to the conclusion that the head people, the head people, Jack Ryan and Ellen Kulka—who was Jack Ryan?

Ms. BRESLAW. He was—his title has changed. I believe he was the Deputy Executive Officer or Acting——

The CHAIRMAN. Was he the acting head at one point of RTC?

Ms. BRESLAW. He was. I don't remember the timeframe.

The CHAIRMAN. He was one of the head people?

Ms. BRESLAW. Correct, certainly.

The CHAIRMAN. Who was Ellen Kulka?

Ms. BRESLAW. At the time she was the General Counsel of the RTC.

The CHAIRMAN. One of the head people?

Ms. BRESLAW. That's right, sir.

The CHAIRMAN. So it says, "I think if they can say," the head people, "if they can say it honestly, they would like to be able to say Whitewater did not cause a loss to Madison." How did you come to that conclusion?

Ms. BRESLAW. Again, as I've said, I don't remember making the remark so I can't very well speculate on——

The CHAIRMAN. Well, did anyone suggest this to you, that Jack Ryan or Ellen Kulka would speak to you about this?

Ms. BRESLAW. No, as I've testified, certainly not.

The CHAIRMAN. They didn't speak to you about this. Did you just assume this?

Ms. BRESLAW. Again, I don't remember making the remark so I cannot speculate on what I was thinking when I said something I don't remember saying.

The CHAIRMAN. You remember meeting with April Breslaw in her office, though, on February 2, or you remember, Ms. Breslaw, meeting with Ms. Lewis, don't you?

Ms. BRESLAW. Right, I'm Ms. Breslaw.

The CHAIRMAN. I understand. You remember meeting with Ms. Lewis?

Ms. BRESLAW. That's right.

The CHAIRMAN. On the 2nd?

Ms. BRESLAW. February 2.

The CHAIRMAN. You had a conversation for a period of time?

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. And you don't know why you would have ever said this?

Ms. BRESLAW. No, sir.

The CHAIRMAN. You're not disputing it?

Ms. BRESLAW. The document says what it says. I don't recall saying it.

The CHAIRMAN. The only thing that could have been better is if this could have been recorded, and it could have been also written in your diary and then you could have topped everything else that I've heard.

Ms. BRESLAW. There is no diary.

The CHAIRMAN. Your testimony lacks in credibility, and I say that to you. It is absolutely something that is extraordinary to hear you come in, somebody who can recall with the vivid detail you do the things that you want to and forget purposely and not even be able to recognize your own conversation with Ms. Lewis, and then to suggest that possibly you didn't make this statement, something of such a nature where you're saying the head people as it relates to Whitewater would like, if honestly—I understand inserting if honestly—that you did not cause a loss to Madison.

I just find it absolutely unacceptable and not believable. It is not credible.

The yellow light is going on. We are going to take a break, come back at 2:00 p.m., at which time the Minority will have their—2:10 p.m.? OK. We'll resume at 2:10 p.m.

[Whereupon, at 12:50 p.m., the hearing was recessed, to be reconvened at 2:10 p.m. this same day.]

AFTERNOON SESSION

[Whereupon, Julie Yanda, Karen Carmichael, and April Breslaw resumed the stand and, having been previously duly sworn, were examined and testified further as follows:]

The CHAIRMAN. The Committee will resume, and it is now the Minority side so I will turn to Senator Kerry who will allocate the time. We'll try to get this panel done as quickly as we possibly can because we have other panels.

OPENING COMMENT OF SENATOR JOHN F. KERRY

Senator KERRY. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Kerry.

Ms. Breslaw, I want to bring something out that was raised by Senator Bond before our luncheon break with respect to the question of allegations of whether Ms. Lewis had positioned people in her office so as to effectuate a surreptitious taping. I know you haven't seen but the staff has seen, and indeed participated in, the deposition of Ms. Lewis on this very subject, so I wanted to read that into the record at this point.

At page 287 of Ms. Lewis' sworn deposition.

Question: And when she walked into the office, [referring to you, Ms. Breslaw] you said, "come in, come in." When she appeared at the doorway, you said, "come in, come in." Correct?

Answer: Correct.

Question: And then what happened?

Answer: As best I recall, I walked around to the back of my desk and took a seat. Ms. Breslaw stayed standing in front of my desk, where we spoke for a few minutes, and then an issue was raised with respect to a particular document. She walked around behind my desk and we observed this document at the same time. I was looking up talking to her. She was looking down talking to me. It was during that exchange I remember seeing the tape recorder on. I suggested we sit on the other side of the desk.

Question: And you suggested that you both sit on the other side of the desk?

Answer: "Yes, sir," by Ms. Lewis.

Question: So that you would be looking at each other and not across your desk where the tape recorder had its red light on?

Answer: So I wouldn't be craning my neck looking up at her and so that she would not see the tape recorder, yes, sir.

Question: Why would you be craning your neck if she sat on one side of the desk in the visitor's chair and you sat in your regular desk chair?

Answer: I'm sorry, I was thinking back to the fact that she was standing next to me when we were having the conversation, and at that point I suggested we both go and sit on the other side so we would both be more comfortable.

Question: Under that arrangement, she would not be looking across the desk at you in the direct line of the tape recorder?

Answer: That's correct.

Question: Did that enter your mind?

Answer: Absolutely.

Question: So it was—for that purpose, in addition to not craning your neck if she would continue standing during the entire duration of the meeting, that you suggested that you both sit on the same side of the desk?

Answer: That's correct.

That indicated to you in hindsight, did it not, that Ms. Lewis was positioning you in the office so that you would not detect that her tape recorder was on and recording?

Ms. BRESLAW. Yes, sir.

Mr. BEN-VENISTE. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Mr. Ben-Veniste.

Ms. Carmichael, I know you've come in from out of town to testify here today and I want to try to bring you into the conversation for a few minutes. Is it correct that before June 17, 1993, there was no requirement that lawyers within the Kansas City RTC field office review criminal referrals before the Office of Investigation submitted those referrals to the Department of Justice?

Ms. CARMICHAEL. There was no written policy, RTC policy that said that they had to be reviewed by legal before they were sent out.

Mr. KRAVITZ. We've already heard testimony about the written policy directive, that came out on June 17, 1993, changing that policy, and you're familiar with that directive?

Ms. CARMICHAEL. Yes, I am.

Mr. KRAVITZ. Just to be clear, that directive required that the Office of Investigations at the various field offices submit drafts of criminal referrals to the PLS offices for a legal review before submitting those referrals to the Department of Justice; is that right?

Ms. CARMICHAEL. That is correct.

Mr. KRAVITZ. Now, was that a nationwide policy or a policy directive that was limited simply to the Kansas City field office?

Ms. CARMICHAEL. Nationwide policy.

Mr. KRAVITZ. To your knowledge, did the June 17, 1993 nationwide policy have anything to do with the Madison case specifically?

Ms. CARMICHAEL. No, sir.

Mr. KRAVITZ. It was a nationwide policy to apply to all criminal referrals?

Ms. CARMICHAEL. It applied to all criminal referrals. It was an issue that was brought up in the January 1993 Criminal Coordinator's Conference in Washington, DC that was attended by all criminal coordinators, both investigators and legal. It was an issue, and they said at that time that they were putting it in writing, and then ultimately we received it in June.

Mr. KRAVITZ. Mr. Dudine, the head of investigations for the entire RTC, and others have testified in depositions that one of the reasons why the RTC put in this policy directive in June 1993, requiring legal reviews of criminal referrals was that the RTC had received complaints from various FBI agents and Assistant U.S. Attorneys across the country about the quality of criminal referrals coming out of the RTC when those criminal referrals had not been reviewed first by lawyers.

Are you personally aware of any complaints that had been received or that you had received regarding the quality of any criminal referrals that came out of the Office of Investigations in the Kansas City field office before June 1993?

Ms. CARMICHAEL. Yes, I am.

Mr. KRAVITZ. Could you tell us about that, please?

Ms. CARMICHAEL. In June 1993, I received a phone call from the U.S. Attorney's Office in the Northern District of Oklahoma. We met. Then I went down to Tulsa and met with the Assistant U.S. Attorney who had been working on referrals that were drafted by the same criminal investigator group who previously had been in Tulsa and, then, were now in Kansas City.

Mr. KRAVITZ. Did that criminal investigator group include Mr. Iorio and Jean Lewis?

Ms. CARMICHAEL. Yes, it did.

Mr. KRAVITZ. Please go on.

Ms. CARMICHAEL. They told me that they had spent an awful lot of time and money investigating, following up on the referrals that this group of investigators had drafted and submitted to their offices, when in fact after it was all said and done, there was nothing there. They were angry enough to say that if we continued submitting referrals of this quality without doing our homework first, that they would request that the RTC reimburse them for their time and expenses for following up on a job they felt that we should have done first.

Mr. KRAVITZ. So in your opinion, did it make sense for the RTC to impose the June 17 directive requiring a legal review?

Ms. CARMICHAEL. Oh, absolutely.

Mr. KRAVITZ. What is the purpose of a legal review?

Ms. CARMICHAEL. A legal review is not an authority memo. It's not a memo where we will give authority to proceed or not proceed. It's simply an evaluation by the lawyers as to whether or not the referral itself is documented and supported by the documents that are attached, and they are saying the same story.

Mr. KRAVITZ. Is the ultimate goal of doing a legal review to improve the quality of the criminal referral before that referral goes to the Justice Department?

Ms. CARMICHAEL. Yes, it is. If the U.S. Attorney's Office is receiving several criminal referrals, not just from the RTC but from other agencies and banks, they need to be able to look at it and see that it's a comprehensive referral, that they don't have to start from scratch on their investigation. It should all tell the same type of story, both the documents and the summary.

Mr. KRAVITZ. I believe Ms. Yanda testified earlier that you were one of two lawyers within the PLS in the Kansas City office who conducted the legal review of the nine criminal referrals in the Madison case in the fall of 1993?

Ms. CARMICHAEL. Yes, I was.

Mr. KRAVITZ. The other attorney was Mr. Adams?

Ms. CARMICHAEL. Yes.

Mr. KRAVITZ. Mr. Adams is a former U.S. Attorney, Assistant U.S. Attorney?

Ms. CARMICHAEL. Yes, he is.

Mr. KRAVITZ. What did you find in terms of the quality of those nine criminal referrals in the Madison case when you reviewed them in late September and early October 1993?

Ms. CARMICHAEL. Generally they were very confusing, they were not supported by the documents that were attached, totally. Some were, some weren't. There were nine different referrals. Many referred back and forth to each other so unless you had already had one referral and comprehended it, you wouldn't understand what another referral was discussing.

There were certain people that were named in the referrals when, in fact, they were not the people who, according to the documents, if you read through the documents initially, you would think were the people who had responsibility or did the activity that supposedly the other people who were named in the referral supposedly had.

Mr. KRAVITZ. You testified in your deposition at page 186 that, "There were a lot of assumptions and conclusory statements that were made that were not backed up by the documents that were supposed to be backing up those statements." What did you mean when you testified that, "There were a lot of assumptions and conclusory statements."?

Ms. CARMICHAEL. I don't have a specific instance right this second, but as I recall, there were statements like this person did this activity, and yet the documents that were supporting it did not evidence the same thing. You could draw innuendo or try to jump from one conclusion to the other, but it certainly did not state conclusory what they were saying was a fact.

Mr. KRAVITZ. Mr. Chairman, may I take 2 more minutes just to finish this line?

The CHAIRMAN. If you're going to finish the line.

Mr. KRAVITZ. Thank you. Did you and Mr. Adams provide a legal review to the investigators?

Ms. CARMICHAEL. Yes, we did.

Mr. KRAVITZ. Did that legal review include suggestions for how the referrals could be improved?

Ms. CARMICHAEL. Yes, it did.

Mr. KRAVITZ. Did your review also include questions that you thought should be answered before the referrals were made to the Justice Department?

Ms. CARMICHAEL. Yes, it did.

Mr. KRAVITZ. The purpose of making those suggestions and asking those questions was to improve the quality of the referrals?

Ms. CARMICHAEL. Yes, it was.

Mr. KRAVITZ. To your knowledge, were any of your suggestions taken by the Office of Investigations before those referrals were submitted?

Ms. CARMICHAEL. No, they were not, not to my knowledge.

Mr. KRAVITZ. To your knowledge, were any of the questions, that you thought should be raised, answered before those referrals were sent over to the Justice Department?

Ms. CARMICHAEL. Not that I know of.

Mr. KRAVITZ. In your opinion, were those nine criminal referrals improved in the way that was contemplated by the June 17, 1993 directive requiring a legal review?

Ms. CARMICHAEL. Not that I know of.

Mr. KRAVITZ. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Chairman D'Amato.

Ms. Breslaw, we have a transcript of the conversation between you and Jean Lewis on February 2, 1994. This is just more out of curiosity of me than anything else.

In the transcript, why did you say the head people, Jack Ryan, Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison? You testified that you had not met either of these people. Why would you be so presumptuous and bold as to say such a thing if you had never met them and talked to them?

Ms. BRESLAW. Sir, as I have testified a couple of times now, I do not remember making this comment. However——

Senator FAIRCLOTH. But you made it.

Ms. BRESLAW. Well, for the sake of argument, we have a transcript here and I don't want to fight with you about this. I think if you look at—I believe, on page 59. As Mr. Ben-Veniste pointed out, the statement begins "I think," so even that suggests that there's speculation involved. So it's difficult—in fact, it's impossible for me to speculate about what might have been in my mind when, perhaps, I made a comment that I don't remember making.

The best I can say to you is that it is clear from this transcript that the sentence begins "I think," so that that is an indication that I was speculating, assuming that this is an accurate rendition of what was said.

Senator FAIRCLOTH. From your position to their position, don't you think that was pretty bold speculating?

Ms. BRESLAW. Well, sir, people speculate all the time and——

Senator FAIRCLOTH. No, people don't speculate all the time. Most people stick pretty close to the truth.

Ms. BRESLAW. Sir, in my experience——

Senator FAIRCLOTH. Go on to the next question. You have testified that you don't recall the conversation very well, but on March 24, 1994, the day after Mr. Leach mentioned this on the House floor, you sent an E-mail to Jack Ryan and Ellen Kulka in which you did recall certain aspects of the conversation. Further, you met with Ellen Kulka on March 28, and in that meeting—and we have the notes taken by the secretary that was present at the meeting—you recalled using the names of Mr. Ryan and Ms. Kulka in conversation with Ms. Lewis. Are you really telling us the truth? Do you, in fact, remember the conversation very well now—it's up on the board here, you can read it.

Ms. BRESLAW. I do not remember the conversation very well, but I do not deny that the conversation happened. I would observe that the page of notes that you're referring to, as I said, were notes taken by a secretary who was present at the meeting. I have seen this set of notes before and have observed a number of factual inaccuracies in those notes.

Senator FAIRCLOTH. But this document was presented to the House, submitted to the House last year, and you recalled using the name of Mr. Ryan and Ms. Kulka in the conversation, you remembered that pretty well.

Ms. BRESLAW. I guess two points. First, it was my understanding anyway that when this document was submitted, it was submitted with the corrections that I had made to the factual inaccuracies throughout the notes.

As to the paragraph that you're referring to, all this says——

Senator FAIRCLOTH. You didn't even correct that provision, so this is——

Ms. BRESLAW. Well, looking at the paragraph that's here, with the understanding that this is not my statement, this is a secretary's notes of a conversation——

Senator FAIRCLOTH. Did you think the secretary copied it wrong, that she was really in this thing to do you in and didn't take the notes down right? Is that what you're saying?

Ms. BRESLAW. I know that she made factual mistakes. That does not mean somebody is involved in a conspiracy or doing anything intentional. She was a person who would have no personal knowl-

edge of any of these things so I don't impute any bad motives to her, but I know there are factual mistakes in this document.

I guess what I would say about that particular paragraph is that it references what is described in her notes as the, "tolling agreements and the D'Amato letter."

I believe that is a reference to what I mentioned in my opening statement today. As I testified, Mr. Iorio spent time on February 2, 1994, walking around with correspondence to various Members of Congress, including perhaps Senator D'Amato, which dealt with statute of limitations issues, tolling agreement issues that were going on at the time.

So it seems to me what all this is suggesting, is my recollection, that those issues had arisen in the course of the day, and it may be that either Ellen Kulka or Jack Ryan were referenced in that correspondence as well. I think that's what it's a reference to generally.

Senator FAIRCLOTH. It was the only point where you mentioned Ellen Kulka and Jack Ryan, but it seems what we are hearing out of you—and I'll move on to the next question—if there has been some sort of massive conspiracy among—looked like a lot of people——

Ms. BRESLAW. It's Jean Lewis that says conspiracy, not me.

Senator FAIRCLOTH. Did anyone at RTC instruct you to find out if Whitewater caused losses to Madison?

Ms. BRESLAW. Yes.

Senator FAIRCLOTH. Who instructed you to do that?

Ms. BRESLAW. Mark Gabrellian.

Senator FAIRCLOTH. Who?

Ms. BRESLAW. Mark Gabrellian.

Senator FAIRCLOTH. Did anyone tell you that they would like you to say Whitewater did not cause a loss to Madison?

Ms. BRESLAW. No one said that to me, correct.

Senator FAIRCLOTH. You said, "No one said that to me." Did they say something almost like that to you?

Ms. BRESLAW. No, sir. I'm sorry, I was having trouble understanding your question and I wanted to make a clear response.

Senator FAIRCLOTH. Ms. Breslaw, isn't it true that you have been the Professional Liability Section attorney assigned to Madison since 1989?

Ms. BRESLAW. For most of the time, yes. As you probably know, I resigned from the Madison project in March 1994, so as long as you understand that I am not currently involved in it, it is true that I was assigned to Madison issues from 1989 to 1994.

Senator FAIRCLOTH. Ms. Breslaw, when you went to Kansas City, were you well aware of the fact that the statute of limitations for Madison was going to expire on February 28, within 26 days of your visit?

Ms. BRESLAW. Yes, sir.

Senator FAIRCLOTH. Knowing all of this, you were well aware during your Kansas City visit that you, being the lead professional liability attorney on this case, and knowing the statute would expire very soon, that you held the key as to whether the Clintons would be sued or not sued or having toll agreements asked for. In other words, this thing was in your hands; isn't that right?

Ms. BRESLAW. No, sir. The decisions to sue are beyond my authority and have always been, so I certainly would not in any case have had the authority to make a decision to sue anybody in particular.

Senator FAIRCLOTH. But you were out there to decide whether—that's what you were there for, to decide whether the—knowing the statute would expire very soon, something had to be done so it was up to you to decide whether we sue, don't sue, or extend—do a toll agreement.

Ms. BRESLAW. I would not be the person making those decisions. I was part of the team.

Senator FAIRCLOTH. But you were recommending to somebody who did?

Ms. BRESLAW. I was part of the team. In fact, Mr. Gabrellian was really in charge of the team at that point. I don't want to fight with you. It's true, I was part of a team that was looking at those issues and probably would have been part of a group which would have made recommendations. I don't disagree with that, but I just want it to be clear that I would not have been the decisionmaker.

Senator FAIRCLOTH. But now you expect the Committee to believe that you have no recollection of the conversation with the criminal investigator that gave you solid evidence that Whitewater may have caused losses to Madison?

Ms. BRESLAW. That's not what I said, sir. I said that my recollection is vague. I do not dispute the fact that I met and spoke with Ms. Lewis, and I would say that in the conversation with Ms. Lewis, the transcript, and the recording, frankly, that was played yesterday only shows that I was listening to what she was saying and agreeing with many of the points she was making about this.

Senator FAIRCLOTH. You expect us to believe this, and you say your recollection is vague, and it certainly parallels your testimony.

Ms. Breslaw, you hired the Rose Law Firm to sue Madison accountants on behalf of the RTC and FDIC; is that right?

Ms. BRESLAW. It was the FDIC at the time, sir.

Senator FAIRCLOTH. FDIC. It has now been revealed that Webb Hubbell overbilled clients, he told his father-in-law's attorney to go get $400,000 out of the bank that was owed to the Government, they represented Madison and used the Frost Report for their own benefit. In hindsight, don't you think hiring the Rose Law Firm was a big mistake?

Ms. BRESLAW. If I had known then all the information that's been revealed now, I doubt I would have hired them, but based on the information that I had at the time, I stand by the decision that I made at the time. Much of the information that you've just gone through was not revealed to me at that time.

Senator FAIRCLOTH. But you still would doubt—you would have to give it some thought now, you just couldn't say absolutely not, terrible thing to even think about doing, you would still vacillate on it a little bit?

Ms. BRESLAW. My experience with them was that they were a very good law firm, they did a good job on the Corning Bank directors and officers liability case, and on the merits, I believe they did a good job on the accounting case. I suppose that has to be balanced against all the negative things that you've just described.

Senator FAIRCLOTH. Do you think Webb Hubbell lied to you when you hired him?

Ms. BRESLAW. Yes, sir, I do.

Senator FAIRCLOTH. You believe he lied to you?

Ms. BRESLAW. Today I do, yes, sir.

Senator FAIRCLOTH. Knowing all of this, when you got press inquiries into the matter, why did you turn around and call Webb Hubbell, the number—well, his position at the U.S. Attorney's Office would be debated whether he was one, two, or three, but he was referred to earlier as the COO, or the Chief Operating Officer. But anyway, he was up there in Justice and a very close friend of the President. Why did you call him to get answers to the press calls? Isn't that going a little high to get an answer to a press inquiry?

Ms. BRESLAW. I guess two things, sir. First of all, the negative things that you just listed were not known to me in September 1993, when I contacted or attempted to contact Mr. Hubbell. I think it's also important to understand——

Senator FAIRCLOTH. Another question.

Ms. BRESLAW. Excuse me, sir, may I please finish?

At the time the press inquiry came in, I made an effort to contact the two people who had personal knowledge of the Frost lawsuit and who I assumed at the time would have knowledge of potential conflicts issues. One of those people was Rick Donovan at the Rose Law Firm and the other person was Webb Hubbell, who as you've indicated was at the Department of Justice at that time. The reason I reached out to both of them was that I assumed that they would have the factual information that I would need, or I should say, that our press office would need to respond to the inquiry.

Senator FAIRCLOTH. Wouldn't it have been more normal that you would turn this over to your superior rather than leaping through a 20-stack of lawyers in hierarchy and going to Webb Hubbell? Wouldn't your normal course have been to have gone to your superior, and then—or did you sense this was a big problem brewing and you ought to get to the head fast?

Ms. BRESLAW. Well, sir, to me——

Senator FAIRCLOTH. If the press inquiry had been on something else, would you have gone——

Ms. BRESLAW. My experience has been at the RTC that when a press inquiry comes in, the press office itself usually does not have factual information to respond to the reporter, so typically what happens is that the press office works with whoever it is in the RTC who has factual information or who knows where to get factual information to gather it and then provide a response. So in my view at that time, all I was doing was what was normal, which is trying to gather factual information for the press office.

Senator FAIRCLOTH. You were not trying to tip off the higher-ups of an impending news story so that it would be sure that they would know it, and really, the whole point in your call was not to tip off Hubbell and his closeness to the Clintons so they would be aware, look out, something is coming?

Ms. BRESLAW. No, sir.

Senator FAIRCLOTH. Was this an opportunity for you to ingratiate yourself with the President and Mr. Hubbell?

Ms. BRESLAW. No, sir. The President was not discussed at all when I spoke with Mr. Hubbell.

Senator FAIRCLOTH. Ms. Breslaw, the White House produced talking points during the House hearings last summer. These talking points, 12 pages of them, all attack Jean Lewis and the issues she had raised. Did you in any way help the White House or the Congressional Democrats to produce the talking points? Were you involved in any way?

Ms. BRESLAW. No, sir.

Senator FAIRCLOTH. Did you attend meetings, have telephone calls, or produce documents to anyone before the hearing?

Ms. BRESLAW. The RTC has been producing documents both to the House Banking Committee and to this Committee. I have produced what documents I had that were responsive to the RTC for that production. That's the only context in which documents that I have had have been, as far as I know, produced to Congress. I certainly have had no personal meetings with either Committee staff or with anybody from the White House.

Senator FAIRCLOTH. Mr. Chairman, my time is up.

The CHAIRMAN. Thank you, Senator.

Let me say that we have come to an agreement as it relates to interrogatories, four questions as they relate to the telephone number, 202–628–7087, which will be sent to the White House, to Mrs. Clinton, to ask if she can identify the number or the person.

Basically, after we make some typographical and grammar corrections, we will have it available. Pardon me? Oh, we have a corrected copy. Let's have it verified and we will ask that this interrogatory be undertaken by Mrs. Clinton.

Senator SARBANES. Mr. Chairman, I appreciate we had the opportunity to consult. This is obviously an unusual and unprecedented action, to send interrogatories to the First Lady. This is an unusual situation, this particular one. We made every effort to obtain information from the sources, the telephone company and so forth, and we have not been able to get full information, so I think the interrogatories in this instance are appropriate.

But I would again underscore the unusual nature of this, and it doesn't really, I don't think, constitute a precedent simply to be pursued. It is my understanding that if any comparable situation should or might arise, there will be extended consultation between the Chairman and the Ranking Member about it.

The CHAIRMAN. Absolutely.

Senator SARBANES. Mr. Chairman, Senator Boxer is not able to be with us because she's with the Budget Committee—but she introduced—well, it is not quite clear whether she succeeded in introducing it or not, but in any event, a contract involving Ms. Lewis and her attorneys, and I just would like to include that in the record, along with a statement by Senator Boxer about that.

The CHAIRMAN. It will be done and it will be done at the appropriate place, we will ask that these materials be put into the record when Ms. Lewis was testifying.

Mr. CHERTOFF. Mr. Chairman, I had indicated that I wanted to call the Committee's attention to a letter which apparently was issued today by Mr. Kendall in response to the announcement we had this morning concerning the additional records of entries and

exits by Mr. Barnett, Ms. Thomases, and Ms. Williams on July 27, when the documents were moved from the residence of the White House to Williams & Connolly. These are the Foster documents.

The letter, which is dated November 30, was actually furnished to the press and someone was kind enough to furnish it to us. I was going to ask that it be made available to everybody here.

What I would call the Committee's attention to is the fact that the letter recounts Mr. Barnett's recollection of having been with Ms. Williams up on the third floor of the residence at the time that he personally reviewed the documents that were held in the box in the residence. And that is, frankly, contradictory to Ms. Williams' deposition testimony about her experiences or her recollections on that day, which was given on July 7. Ms. Williams took the position there wasn't any review of documents in her presence, Mr. Barnett was not around. All she did was come up with a messenger and have the messenger remove the documents.

We now have representation from Mr. Barnett's lawyer that in fact once inside the White House personal residence, he met with Ms. Margaret Williams, Ms. Clinton's Chief of Staff, who directed him to the box of personal files on the third floor of the residence. He reviewed the files, taped the box closed, and called an employee from the law firm to come to pick them up, and that Ms. Williams was present when he was reviewing the documents. That again is fairly significant differing information about the events of that day which has come to light.

The CHAIRMAN. We're going to ask Mr. Barnett to come in to testify as it relates to this, and there's no doubt, I feel very strongly Ms. Williams will have to come back again as it relates to this. Maybe this will refresh her recollection but I find something, and I say it to the representatives of the White House, if you're going to give something to the press, you should certainly give it to the Committee. If this was sent to you, I think it's a heck of a way for this Committee to get this information, that we have to get it from the press.

I also find that it's a pattern which the White House regularly engages in. It gives us bits and pieces of information. Then when we find out there's more, such as the entries of the people coming in and out on the day in question, then they furnish it to us. It's only after persistent questioning, et cetera, and it's simply not right. It only creates greater doubt as it relates to the reliability of the testimony, and I'll be quite candid, and the cooperation that the White House has promised because it is not forthcoming in a manner that it should. Certainly the release of this letter to the press without furnishing, at least simultaneously, copies to the Committee, Democrats and Republicans, is absolutely wrong. So I note that for the record.

Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. I have a question for Ms. Yanda in connection with the Cimarron referral. Are you familiar at all with the Cimarron S&L referral?

Ms. YANDA. Not sitting here today, sir.

Mr. BEN-VENISTE. It was represented to this Committee by Ms. Lewis in her deposition that she signed the Cimarron Savings &

Loan criminal referral, although she did not write the referral and she did not do the majority of the work on that referral. Do you know of any procedure under which it would be appropriate for the person who did the work not to be reflected on the document?

Ms. YANDA. No, sir, I'm not aware of any such procedure.

Mr. BEN-VENISTE. Let me ask for your reaction to the testimony which was presented on this subject, at page 368 of Ms. Lewis' deposition.

Question: Who drafted the Cimarron referral?
Answer: It was predominantly Mr. Noyes, with some additional input from me.
Question: Prior to the drafting of the Cimarron referral, what was the conversation between you, Mr. Noyes, and Mr. Iorio about why your name would appear and not Mr. Noyes?
Answer: Mr. Noyes had previously been the managing agent of Cimarron Federal Savings prior to his joining the investigative department. Due to the circumstances under which Mr. Noyes had left that particular position, Mr. Iorio did not wish to make an obvious affiliation between Mr. Noyes and any continuing investigation of that particular institution which had been assigned to me. And I had a very strong working knowledge of it, as did Mr. Noyes. So the decision was made at that point that Mr. Noyes would write it and I was asked to sign it.
Question: The reason had nothing to do with the fact that you were working on Madison in some other capacity even though you had been relieved from responsibility as a criminal investigator at that point; is that correct?
Answer: That's correct.
Question: And if I understand what you're saying, Mr. Iorio thought there might be some adverse reaction to Mr. Noyes being associated with this criminal investigation relating to Cimarron?
Answer: Yes, sir.
Question: And he did not want to disclose that fact; correct?
Answer: Yes, sir.
Question: Is the criminal referral something that goes to the criminal defendant? et cetera.

And then so at page 370:

Question: So it was to keep Mr. Noyes' involvement in the criminal referral from the U.S. Attorney's Office and the FBI that his name did not appear in it?
Answer: No, sir.
Question: Who else did this criminal referral go to?
Answer: The Professional Liabilities Section.
Question: And you wanted to keep it from the Professional Liabilities Section the fact that Mr. Noyes was involved in the investigation because of Mr. Noyes' prior association with the institution?
Answer: That's my understanding, yes, sir.

Now, do you have some comment on this series of events and explanations?

Ms. YANDA. Sir, I certainly don't know anything about the circumstances about some surreptitious ghostwriting of the Cimarron referral. The only information I have about this is that I received a call from Dick Parks in the Criminal Investigative Unit who complained about the fact that Jean was signing off on referrals that she had no authorship of.

Mr. BEN-VENISTE. And that was another fact that concerned you, that she was doing that?

Ms. YANDA. Surreptitious ghostwriting would concern me under any circumstance, sir.

Mr. BEN-VENISTE. What is the purpose of the criminal investigators keeping time records?

Ms. YANDA. Sir, we are all Government employees. We have to keep track of our time.

Mr. BEN-VENISTE. Were you advised at any point that Ms. Lewis was instructed to continue working on Madison but not to record the time that she was spending on Madison?

Ms. YANDA. No, sir, I was not personally aware of it, but several of the investigators did complain to me about that.

Mr. BEN-VENISTE. Let me read from Ms. Lewis' testimony, at page 178, referring to Mr. Ausen and Mr. Iorio:

Question: Did they indicate to you, that you shouldn't put down on your time sheets as Madison what you're saying? Is that what you're saying or are you saying something different?

Answer: I'm saying the consensus between the two of them was I should continue to work on these projects and as I had been removed from the Madison investigation, keep a record of the time that I did spend.

Question: So they told you to keep a record?

Answer: Of my own time, yes, but not to put it on the time sheets.

Question: Is that what you're saying?

Answer: That's correct.

Is there any procedure for keeping two sets of books with respect to time records?

Ms. YANDA. There's certainly no such procedure in my Section, sir, and I'm not aware of any policy that governs that.

Mr. BEN-VENISTE. Ms. Lewis testified that she spent some 200 hours in connection with maintaining a news clipping file on all Madison related matters in 1993 and 1994. Could you comment on the appropriateness of spending that much time on that type of a project?

Ms. YANDA. I have no idea what would trigger that kind of time.

Mr. BEN-VENISTE. Mr. Kravitz.

Mr. KRAVITZ. Thank you. Just to put those questions into context, Ms. Yanda, did there come a time in the fall of 1993, specifically in November, when you approached Mr. Iorio and asked him to remove Ms. Lewis from the Madison case?

Ms. YANDA. Yes, sir, I did.

Mr. KRAVITZ. Could you tell us why you did that and what specifically you told Mr. Iorio?

Ms. YANDA. All throughout the fall of 1993, we were being inundated with Grand Jury subpoenas out of the U.S. Attorney's Office, relating to their investigation into Madison Guaranty and to various outgrowths of that investigation. We were getting subpoenas, we were getting superseding subpoenas. We were just getting them on a very frequent basis, requesting all documentation associated with Madison Guaranty, microfiche, all bank records, what have you.

Karen Carmichael as our Criminal Coordinator was charged with the responsibility of overseeing the compliance with those subpoenas, that my Section was—excuse me, that the RTC was receiving. And Ms. Carmichael would deal directly with Mr. Ausen, who was Ms. Lewis' supervisor, and the former Federal prosecutor, Mr. Adams, in my Section, whom I had assigned responsibility relating to this matter, was dealing directly with Ms. Lewis.

Both of them were constantly on a search, trying to find where the records were that the U.S. Attorney was asking for. We were getting requests for all documentations and the U.S. Attorney was telling us, "Look, I know you've got those files, why aren't you turning them over to me?"

This culminated on November 5, 1993, in a complaint from what was described as Main Justice about Ms. Carmichael failing to cooperate with the FBI and the AUSA in complying with these subpoenas.

That afternoon on February 5, 1993——

Mr. KRAVITZ. You mean November 5?

Ms. YANDA. I'm sorry, November 5. Mr. Ausen—excuse me, I should back up.

Ms. Carmichael reported to me that this complaint had been received, relating to her performance on Main Justice. I instructed her to go find out, uncover, lift every rock, look under every sheet of paper but go find those documents.

We had collected everything that the legal division had. We had secured compliance from the legal division, but clearly there were other records out there that the AUSA and the FBI knew about, but which PLS and the assigned criminal coordinator who was responsible for complying or insuring compliance was not aware of. She had asked repeatedly of Mr. Ausen, Mr. Adams had asked of Ms. Lewis, and we still don't have any documents.

So on November 5, Ms. Carmichael gets a call requesting "the inventories." The only inventories that we would be familiar with would be those that are prepared the night of takedown of an institution. When an institution fails, you immediately go in there and good practice has you prepare an inventory.

Ms. Carmichael relates that information to the FBI and the AUSA, and they say no, there are four or five inventories that the RTC has and we want those. She says I'm not familiar with them but I'll go ask for them.

She contacts Mr. Ausen, who makes a trip—the 35-minute trip from Kansas City, Missouri to Overland Park, Kansas where the legal division was located, and he, for the first time, reveals to us that they have got 100 boxes of documents that they had neglected to mention to us when we were trying to find and assemble all the documents responsive to those subpoenas.

Mr. Ausen was in our office late that Friday afternoon. It happened to be a weekend where my son was with his father that weekend so I was working late that night, and I had to watch the horror on Karen Carmichael's face as she finally began to realize that investigations, Ms. Lewis and Mr. Ausen, had 100 boxes worth of documents responsive to subpoenas that the FBI and the AUSA knew about but which nobody had bothered to tell us about, despite our repeated requests.

So that next Monday, I called Mr. Iorio and I said we are getting together and we have to talk about this. Our offices have to do a better job of communicating. This is the same expectation that Mr. Iorio and I have made for our staffs since the day we walked in the door. It was an expectation that I fully expected Mr. Iorio to support, and he did support. He had Mr. Ausen go back and prepare an E-mail explaining why they didn't tell us about these 100 boxes of documents.

I met with Mr. Iorio that afternoon. We went to lunch together. At that meeting, which began at lunch and ended later that afternoon, I described for Mr. Iorio what I thought was an intolerable circumstance where we had the investigations unit aware of certain

information that wasn't being conveyed to us, yet we are responsible for insuring that the compliance is made.

We had a team member, Ms. Lewis, who had a demonstrated failure to perform as part of that team, again going back to the Paragould circumstance, who again has shown herself not to be cooperating, communicating, or being part of that team that's got to speak together with a united voice to make sure that the RTC's interests are advanced.

I went to him and I said we have to take care of this. The referrals are out the door, so the lion's share of the work historically that investigations performs in the criminal unit had been accomplished. The referrals were out the door and Ms. Lewis was not in my opinion playing as part of the team. We had to be together on this one. It was a high profile matter. We needed to put our best foot forward and I didn't think we were doing that.

So I asked Mr. Iorio for his permission to remove Ms. Lewis from the investigation. He asked me, in tandem, if I would agree to remove Ms. Carmichael as the criminal coordinator, and I agreed to do so.

The lion's share of the work was done, from my perspective. No damage could be performed at that point and we would assign Mr. Adams as the successor criminal coordinator on the Madison matter. Mr. Iorio and later Mr. Ausen, whom I talked to for an extended period of time about the very same circumstance, relived the horror of Paragould one more time, and Mr. Iorio and Mr. Ausen agreed that Mr. Caron would take over as the successor investigator, criminal investigator, on the Madison case.

Mr. KRAVITZ. Thank you, Ms. Yanda.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. Thank you.

Ms. Breslaw, I understand—the first time I heard my voice recorded I didn't recognize it, and I understand many times you hear your voice on a recording and it doesn't sound like you. But I must say to you, hearing that recording over the PA system and hearing your voice over the PA system, that if that's not your voice on the tape, it's the best actress I have ever found. She should audition to replace Rich Little for her ability to imitate, if indeed that's not you.

I have to assume, and I do assume, that that is your voice on the tape, and I'm going to proceed on that assumption, that the words on the tape are yours, the voice on the tape is yours, and the words in the transcript are yours.

Ms. BRESLAW. Excuse me, sir. I guess the one thing I would say in response to that is that, you know, as an attorney, I'm always conscious of issues like authentication. And if this were a trial, that kind of proceeding, there would be a whole series of evidentiary questions about whether the recording was authentic, but I want to agree with you on this, that I have no reason to think that this is not my voice.

In fairness, Jean Lewis has admitted secretly taping the conversation, and so I don't want to sit here and fight with you. I have no reason to think this is not my voice, and perhaps this morning I got caught up a little bit in sort of what's instinctive to me in

terms of being concerned about not being able to authenticate something. But I understand that you are not talking about it in that technical way, and so I won't fight with you, I won't dispute that that sounds like my voice.

Senator BENNETT. OK. Now, before I get to some of the things on the transcript, let me say that I am not an attorney. Sometimes that's a great handicap. On occasion, it may be an advantage. I'm hoping in this circumstance it's an advantage.

I listened to your opening statement and to Mr. Ben-Veniste's questioning with some interest. A great point was made over the fact that Mr. Iorio urged you to drink an alcoholic beverage at lunch and you did not. You then made a point that Mr. Iorio steered you around various offices and urged you to go to certain people. You left unstated, but, in my nonlegal view, implied that you might not have gone to any of those places if it had not been for Mr. Iorio.

So I must ask you this question just to be sure we clear the air. With this string of statements on your part, are you implying that Mr. Iorio and Ms. Lewis were trying to set you up, get you drunk and then steer you in a place you didn't want to go in order to trap you into some statements that you didn't want to make on tape and that the whole thing was a conspiracy? Have you put these statements in your testimony with that implication to be left in the minds of the people that hear you?

Ms. BRESLAW. At the time I did not draw a sinister inference, but given what I know now, it is my personal opinion that I was set up. I would say, as far as the questions about speaking with or meeting with Ms. Lewis and Mr. Foust, it was not necessary for me to physically meet with them, I could have talked to them over the phone. Given the short timeframe, and that I was only there for 1 day, I do not believe that I would have gone to actually see them but for the prodding of Mr. Iorio.

Senator BENNETT. Well, he certainly must have moved very rapidly in the conspiracy, because they didn't know you were coming until you showed up, and for them to put that whole thing together in that kind of a hurry is a little difficult for me to credit. They had never met you before and didn't know you were coming. You yourself testified you didn't know you were coming until late in the day or the night—or late in the day the day before.

Let's not belabor that. I do understand from staff—and I will ask you this question just to clarify—that what Mr. Iorio really said was, "I recommend the house wine," and that he said that to everyone at the table. And you have left us with the impression that he urged drinking behavior on you specifically. Now, you were there. Do you have any memory as to which of those versions is the accurate one?

Ms. BRESLAW. I believe that he encouraged me specifically to drink. Certainly everybody was sitting there and if anyone wanted to order a drink, they could and, in fact, he did drink, but——

Senator BENNETT. What did he drink? Did he drink the house wine?

Ms. BRESLAW. He drank a wine. I don't remember what wine it was. But I would say that it's strange, at least as a matter of judgment, that he would encourage anyone to drink, including himself,

in the midst of this project, which, as we have all acknowledged, at that time had a very fast deadline. It's a strange approach for a manager to take.

I would say, sir, excuse me, with regard to your prior comment, I purposely did not use the word "conspiracy" in my statement because I don't understand what happened there, and I have purposely not accused people of somehow getting together and having a conspiracy against me. I just don't know what to think.

Senator BENNETT. That's why I asked the question.

Ms. BRESLAW. But I wonder myself at this point whether Jean Lewis taped other people, whether this had happened before. I don't understand what happened there.

Senator BENNETT. OK. As I said, I don't want to pursue it any further. I saw statements being left to imply things that, in my view, probably didn't happen and that's why I asked you the direct question, were you implying that there was a conspiracy, and your answer is you didn't think so at the time but now you think it's a possibility. Let's move on.

I would like to go to the statements that are in the transcript. Again, instead of focusing on a word here or a phrase there in lawyer-like fashion, in my layman's fashion I would like to review the whole paragraph and tell you what it says to me, trying to be as fair as I know how.

On page 59, in the fatal sentence, "I think if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison."

We spent many minutes here debating over whether or not the word "honesty" was properly included or not included in the quotes that have been made from this particular thing in the various venues where it's been raised. Leave that aside.

Let's take this whole paragraph. "I think if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison. We don't know, you know, what Fiske is going to find and we don't offer any opinion on it, but the problem is, nobody has been able to say to Ryan and Kulka sure, say that, that's fine, because, you know, even though Whitewater did not have a loan, it's been these kinds of things that mean there was a loss that was hidden, so that—I don't know if there's any other way to research, you know, whether—and I'm sorry to ask the same question that I'm sure others have asked, did Whitewater cause a loss? How could we get to a more definitive answer?"

Now, Ms. Breslaw, to me that is not a casual comment taken out of context. To me that is a competent lawyer with a previous agenda coming in to find out something. You have never met Jack Ryan and Ellen Kulka and you're expressing an opinion, I can accept that. You're expressing an opinion that they would like to be able to say Whitewater didn't cause a loss to Madison.

You're entitled to that opinion and you're entitled to express it, and it's a logical thing for somebody connected with the issue to say off the top of her head. But you not only say it there, you come back to it and you say, "The problem is nobody has been able to say to Ryan and Kulka, sure, say that, that's fine."

This is a problem for you, not for her. She didn't raise it, she didn't entrap you in this recorded conversation. You are raising it spontaneously following the other thing. And, then you go on to say, "I am sorry to ask the same question that I am sure others have asked." Once again that sounds to me like a very competent lawyer who comes in determined to ask that question in the beginning, to come back to it a third time in this conversation, "How could we get to a more definitive answer?" It seems to me that is your agenda.

Now, the light is going on so I will try not to intrude too much on my colleagues' time, but I would go quickly to page 63, after you have had a conversation about this issue, which you, not she, raised, then she says on the bottom of page 63, "If you want me to sit here and give you an unequivocal answer to whether or not Whitewater caused a loss, I can't do it. All I can tell you is what I found in," whatever, "and the allegations I have made that yes, I believe Whitewater caused Madison a loss just by virtue of the DEA account and the dollar amount of the unauthorized loans that McDougal approved going out through his corporation."

You say "yes." I'm sure that didn't mean you agree with what she's saying, just yes, you understand what she's saying.

It goes on there. And then we come back to it, page 67. This is you again, bottom of 66. You say, "Well, like I said, I feel self-conscious asking that because in some ways it's kind of a silly question, but you know, it's the kind of thing they're looking for, what they can say. And I do believe they want to say something honest." Same word again that was back 10 pages before almost. "I don't believe at all and I don't want to suggest at all that they want us to reach a certain conclusion. I really don't get that feeling, but," and then that's inaudible, "happier than others, you know, because it would get them off the hook."

I tell you, as a layman, Ms. Breslaw, I see a thread running through this whole conversation, starting at the beginning, following through and ending up here, this many pages later, where you are probing to find out if there is anything that can be sent up the line in the RTC that will say definitively Whitewater did not cause a loss to Madison.

I find it difficult, in my laymen's pattern, to listen to the lawyers argue about the inclusion of the word "honest" in the first place and well, did you really mean this, and was I entrapped, and so on. I accept this transcript at face value. I accept it as your statement, and I find it difficult to believe that you walked in there for that conversation with Ms. Lewis without having a determination in your mind beforehand that you were going to see if there was an answer to this question.

As I read the whole transcript, that comes across to me. I don't want to accuse you of anything, I want to be very up-front as to what I see here and give you a full opportunity to respond.

Ms. BRESLAW. Well, sir, I guess the two things I would say in response to that—and I appreciate the fairness of your reading of the transcript here—there is no dispute that one of my assignments at that time was to determine whether or not Whitewater had caused a loss to Madison. That was one of my assignments. There's no question about that. That assignment was given to me by Mark

Gabrellian. It is apparent that Jean Lewis worked on criminal referrals which had to do with Whitewater and that she was a person who, I thought at the time, might have factual information that could shed light on that question. So I want to be very clear about the fact that I don't dispute that I was trying to come to an answer to that question.

As far as the business about somebody wanting—being happier about a certain answer, I remember in one of the House proceedings, I believe it was Congressman Vento, told an anecdote about an experience he had had on a Committee, I think it was the Small Business Administration Committee, in which he had been asked to investigate allegations against another Member of Congress. And he said that he personally wished that the answer would be exculpatory to that individual, that answer would have made him happier, but even thinking that, he still went ahead with whatever investigation he believed was necessary to get to an honest, true answer to the question that was involved there.

So I guess the point that I would make here is that if there were answers that would have been easier for senior people, that does not mean that anybody, not them, not me, not anybody, would have skewed an investigation to reach those answers, so I think a difficulty with all of this is that something sinister is taken from the business about it being easier or that they would be answers that they would be more happy with.

Again, I don't want to fight with you about what the transcript says, but I guess all I can say is I don't remember making that remark, but it seems to me that even if there were certain answers that would make life easier for more senior people, that does not mean that anybody was pushing the investigation in any particular direction. As you carefully read, I made that clear to Jean Lewis in the course of the conversation.

Senator BENNETT. Thank you. I don't want to intrude on the time of my colleagues. I would only comment thusly. I cannot square what we have just read with earlier characterizations of the conversation with Ms. Lewis, or with the suspicion that you have that you were set up, that she did most of the talking, and that you were tired at the end of the day and all you did was kind of agree with her and get out as quickly as possible.

I find this conversation being a conversation where you had a point you wanted to make, you had a goal you wanted to reach, you used the opportunity of being with her to go after it. I cannot square that with the notion that you were steered in there by some conspiratorial activity on the part of Mr. Iorio and that he tried to get you drunk prior to your doing that so that something even more sinister than that could have happened. I simply cannot square those two.

I apologize to my colleagues for intruding.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman——

The CHAIRMAN. I think Senator Grams may have some questions. Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Thank you very much. I'll make this short. I wanted to follow up on what Senator Bennett has been saying to Ms. Breslaw; in fact, that was much of the same line of questioning I had.

And again to refer to the fact that I read this testimony and also felt that you came to this meeting with a very definite point and you made that point on pages 59, 63, 64, 66, 67. Senator Bennett had pointed out the one paragraph leading to another, so this, I don't believe, was an off-the-cuff type of remark that you happened to make.

Also you just mentioned that you felt that Ms. Lewis might have had some information and you were assigned to Whitewater, so it sounded to me like you sought her out in order to talk with her to get this information.

Ms. BRESLAW. Well, sir, the reason I did not object to speaking with her on that day was that I believe I knew at that time that she had worked on the criminal referrals and so it was plausible to me that she might have some factual information that could be helpful. I don't dispute that, but there is again a difference between speaking with somebody who may have factual information, who is essentially a witness in that conversation, there's a difference between that kind of situation and a situation in which somebody is a participant in an investigation and is somehow inappropriately influenced.

Again, my overall concern about the allegations that Ms. Lewis has made is that implicit in her allegations is the idea that somehow she was conducting a civil investigation and that therefore, somehow my comments to her could have an effect on the outcome of the investigation. That is just not true. She was not in that kind of position.

So I think if one keeps that in mind, then one can appreciate that to some extent, nothing that I said in this conversation really has the level of magnitude that she would attach to it.

Senator GRAMS. Why was Whitewater so important out of all the accounts in the Madison Guaranty Savings & Loan? Why did Whitewater stand out? Why were Mr. Ryan and Ms. Kulka so interested, just so they could honestly say that Whitewater did not cause a loss? Why not Cedar Farms or some of the other projects that were in this, or some of the other accounts of Mr. McDougal, but it just happened to be Whitewater? Why the significance to probably one of the smaller accounts, evidently, of the bunch?

I just want to know who put the idea in your head that you took this message or at least brought up this conversation? Somebody evidently had to talk to you about this. You're relaying feelings that somebody else had said, so somehow somebody had to tell you that these people, whether themselves or somebody else, indicated those feelings to you that you thought you would carry them on to someone else.

Ms. BRESLAW. Well, sir, again, Mr. Gabrellian specifically assigned me the task of trying to establish why the Whitewater——

Senator GRAMS. Why was Mr. Gabrellian so interested in just Whitewater? There was a lot of accounts in Madison that could have led to the failure.

Ms. BRESLAW. Right. I think Mr. Gabrellian can speak for himself. I don't know specifically. I think it is apparent that the term "Whitewater" has gotten a lot of attention in the press. It does have at least secondhand connections to the White House, so it may be that people were aware of its prominence. But I want to be careful here not to speculate about what was in Mr. Gabrellian's mind when he gave me that assignment.

Senator GRAMS. So nobody was trying to use influence to bury Whitewater in any way, to wipe it off the map, so to speak, or to take blame away from this certain project?

Ms. BRESLAW. No, sir, but I think that the important point is that, I think it is reflected through this transcript, is that people were willing to go wherever the investigation took them.

In other words, this focus on honest answers is important in that context because nobody was influencing the investigation in an inappropriate way. People were willing to accept whatever the factual answer to that question was, so I would not characterize it the way you did.

Senator GRAMS. So the bottom line is, you don't feel that anyone told you directly or indirectly or asked you or hinted in any way to try to do the best you can to put the best face on Whitewater? Nobody ever did that?

Ms. BRESLAW. No, sir.

Senator GRAMS. I have no more questions.

The CHAIRMAN. Do you have the notes from the March 28, 1994 meeting? Notes to the file?

Ms. BRESLAW. Yes.

The CHAIRMAN. I think in the first sentence, it says, "On Friday, March 25, Ellen Kulka, General Counsel, had a meeting with Tom Hindes and April Breslaw. This meeting was the result of Congressman Leach's using April Breslaw's name on the House floor the afternoon of March 24. This meeting was commenced at approximately 3:45 p.m." Do you remember being at that meeting?

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. Now, do you know who took the notes at that meeting?

Ms. BRESLAW. I believe it was Wilma Leekin, who is or was Ellen Kulka's secretary.

The CHAIRMAN. Let me take you to the second page, I guess it would be the third paragraph there, starts off with "April." "April said that she told Jean that we had been getting inquiries in Washington about Whitewater."

This is what she's reporting that you said. "She said she told her that Ellen and Jack Ryan had been getting inquiries. She said that she was thinking of the tolling agreements and the D'Amato letter." That letter was the letter I had written requesting information as to when the statute of limitations would run out?

Ms. BRESLAW. I think so, sir. As I mentioned in my opening statement, Mr. Iorio was carrying around a copy of some of that correspondence on the day that I was out there. I don't have a clear recollection now, as we sit here——

The CHAIRMAN. It was public. I requested information and I made it public, finding out and asking the RTC. You saw that let-

ter, which indicated whether or not the statute was going to toll at the end of the month of February; isn't that right?

Ms. BRESLAW. Yes, sir. I guess all I wanted to say is that I don't remember clearly which other Members of Congress were involved.

The CHAIRMAN. But you understand what we are talking about.

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. That letter raised a question and you have referred to it several times as it related to whether or not the statute of limitations would run out; right?

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. It was a question within 20-plus days, whether or not it would run out.

Ms. BRESLAW. That sounds right, sir.

The CHAIRMAN. Let me tell you why I do this. I think it goes right to the point of why you engage Jean Lewis in a conversation—by the way, I find it difficult for you, on one hand, you say you know, she had no responsibility, but here you are asking her or telling her or suggesting to her, if there were no losses, could you tell us, they would like to find out, get down to the bottom, because if there are no losses, you know, that's going to make people happy. I think if they can say it honestly, the head people, Jack Ryan is here, Jack and Ellen would like to be able to say Whitewater did not cause a loss to Madison.

The fact is that it is tied to the letter that I wrote, making an inquiry as to when the statute of limitations would run out. If there was no loss and if Jean Lewis could say yeah, there was no loss, you said go back there and report or ask for that report to be sent, and close the whole thing down. It wouldn't have extended the statute of limitations. You knew there was a lot of pressure on this, didn't you?

Ms. BRESLAW. There was time pressure then, but I guess, sir, the one response I would make to that is that regardless of whatever happened with the Whitewater checking account or related checking accounts, there was, ongoing at the time, a much broader review of possible claims that could come out of Madison Guaranty.

So I think it should be clear that regardless of what the factual answer was with regard to the Whitewater checking account, the rest of the investigation would have had to go forward.

The CHAIRMAN. There was no loss to Whitewater. It would be nice to be able to go back and be able to report that. Wasn't that basically your message?

Ms. BRESLAW. Well, sir, I cannot accept the idea that I was delivering a message. I was not doing that.

The CHAIRMAN. OK, sure. Then it was just your natural curiosity and you determined yourself, you felt that it would be nice to be able to report and they would be happy with that if you could report that? You came to that assumption yourself?

Ms. BRESLAW. Sir, again, as I've said, I don't remember making this remark.

The CHAIRMAN. One way or the other, Counselor, you have been at this—it's one way or the other. Either somebody asked you to determine this or you made that judgment. Now, which one is it? Did you make the judgment to ascertain in your own mind, and you thought and you determined in your mind that Jack and Ellen

would be happy with that? That's an assumption you made? Did you assume that or did someone tell you that?

Ms. BRESLAW. Again, I clearly was assigned the responsibility for looking into the factual question. I don't dispute that. But in terms of this suggestion that somebody would be happier with a certain answer, again, I don't remember making that remark, so I can't speculate here as to what might have been in my mind at the time.

I think, though, that the relevance of the Congressional correspondence is that it does suggest to me that the fact that Iorio was carrying that correspondence around that day may have been what sort of planted in the back of my mind that senior people at the RTC were involved in sort of a tense situation with Congress at that time.

The CHAIRMAN. Now, let me ask you, you've testified that Jean Lewis was really—she had little if any knowledge with respect to this, this was not the person—in this whole matter, she was not a very important person.

Ms. BRESLAW. No, sir.

The CHAIRMAN. No?

Ms. BRESLAW. I have said that I did not disagree with Iorio that she was the person who apparently worked on the criminal referrals, and that as far as being somebody who might have factual information, sure, she did. I didn't dispute that. What I do dispute is her contention that somehow she was an investigator in the civil project, which was the project I was working on.

The CHAIRMAN. Then why did you go to ask her these questions?

Ms. BRESLAW. Because I thought she might have factual information, she could be a witness.

The CHAIRMAN. So she did have some facts.

Ms. BRESLAW. Of course.

The CHAIRMAN. I have heard some people here talk about the fact that her knowledge would be almost irrelevant.

Let me ask you to take a look at the fifth paragraph down, and in the middle of that paragraph, it starts on the first page. "At the end of the day, April said, stop by Jean's office." Now——

Ms. BRESLAW. I'm sorry, which one?

The CHAIRMAN. Fifth paragraph on the first page. I think this is important, because in your testimony before the Committee you kind of let us believe you were almost induced, brought into this room. By the way, I get that feeling because you say that they even tried to get you to drink. Do you know what Mr. Iorio said? He recommended to everybody that—he said the house wine was a good wine. Is that something that's unusual? Have you ever been in anybody's company—is that an unusual thing to say——

Ms. BRESLAW. It was an unusual thing to say in the context where you described where we had a very fast deadline to meet where we were all working very quickly. I still consider it odd that, under those circumstances he would encourage the staff to drink at lunch. I do consider it unusual. I guess it has not happened to me before.

The CHAIRMAN. He encouraged the staff. You mean you have never been out before in someone's company and they said, by the way, the house wine is a good wine, I recommend it?

Ms. BRESLAW. Not in the midst of a fast-paced case like that, no.

The CHAIRMAN. Was this important? Was this a high profile thing, an important matter for you?

Ms. BRESLAW. I said fast-paced, sir. In fact, I cannot remember any other time in which anyone from the investigations office has encouraged me or anybody else to drink at lunch during the business day.

The CHAIRMAN. Did he specifically encourage you or was it the group?

Ms. BRESLAW. He encouraged everybody who was supposedly working on this project, but he particularly——

The CHAIRMAN. Was there some kind of malice or evil in that?

Ms. BRESLAW. It is highly irresponsible—and I want to be clear. He encouraged me several times to drink, although the invitation was open to everybody.

The CHAIRMAN. Well, let me tell you how I have trouble reconciling this all because I hear your previous testimony as it related to this, you know, trying to get you into this room. You went down there, and one of your purposes was to talk specifically and to seek her out, Jean Lewis; isn't that right?

Ms. BRESLAW. Not particularly, no.

The CHAIRMAN. Oh, it wasn't? I mean, on one hand, she is the person who had the information for you to find; on the other hand, no, that was incidental?

Ms. BRESLAW. I could easily have spoken with her on the phone, sir. It was not necessary for me to meet with her when I went there. I physically met with her because Mr. Iorio encouraged me to do that.

The CHAIRMAN. That is the only reason because Mr. Iorio—in other words, Iorio was the guy who said you should see her?

Ms. BRESLAW. Yes.

The CHAIRMAN. Take a look at the notetaker who I obviously—if—you will have trouble reconciling this if you have trouble reconciling your own voice on the tape and your own transcripts. "Mark Gabrellian had asked April"—who is Mark Gabrellian?

Ms. BRESLAW. Gabrellian. Mr. Gabrellian is a senior counsel who was in charge of the Madison project.

The CHAIRMAN. So he asked you to form an understanding about whether the Whitewater checking account had caused a loss. Now, do you remember that?

Ms. BRESLAW. That is true, sir. I have not disputed that.

The CHAIRMAN. "April said she only had a passing knowledge of what that involved." So you reported to him that you only had a passing knowledge of that?

Ms. BRESLAW. At the time that I started the project, I had no knowledge of it, because I hadn't worked on it.

The CHAIRMAN. Counselor, look, there came a point in time when you and Mr. Gabrellian spoke about Whitewater; is that right?

Ms. BRESLAW. Sure.

The CHAIRMAN. He was your boss?

Ms. BRESLAW. For that project, yes, sir.

The CHAIRMAN. He asked you to try to form an understanding about the Whitewater checking accounts and whether there was a loss, huh?

Ms. BRESLAW. That's correct.

The CHAIRMAN. So you indicated to him you had only a passing knowledge of what was involved. "But Jean," that is Jean who?

Ms. BRESLAW. It appears it is Jean Lewis.

The CHAIRMAN. "But Jean was the primary person to talk to."

Ms. BRESLAW. Which is what Iorio kept saying.

The CHAIRMAN. This is your conversation that you had with Gabrellian. This isn't Iorio in here. You don't——

Ms. BRESLAW. Mr. Gabrellian was not at this meeting.

The CHAIRMAN. This is why you went down there. You went down there because Mr. Gabrellian said let's find out, what do they know. So you said Jean was the person to talk to. "April said she went to Jean's office. April said that Jean considered her role very, very important. Jean insisted that she close the door."

You indicated that this was the person to talk to. Are you saying that now, when you—did you tell that to Gabrellian? Did you indicate to him when he asked you listen, I have a passing knowledge, but Lewis is the person to talk to?

Ms. BRESLAW. No, sir. These notes, as you can tell, were taken by a secretary, on March 28, 1994. My knowledge at that time was different than my knowledge on February 1 or 2, 1994, when first Gabrellian asked me to go to Kansas and then I actually went on February 2.

So I don't think there is any dispute, factually, that Jean Lewis was a person who has factual knowledge about Whitewater. What this paragraph does not say is who encouraged me to go speak with her, and these are nothing more than secretary's notes which have a number of factual inaccuracies.

The CHAIRMAN. Well, everybody is wrong, the fellow who says that you called up—what's his name? Gary Davidson, I guess he made this all up.

Ms. BRESLAW. We established this morning, sir, that Davidson says the conversation occurred on January 13 or 14. Based on the E-mail Mr. Chertoff showed me this morning, that date seems incorrect.

Mr. CHERTOFF. It was a different conversation. You had two, Ms. Breslaw.

The CHAIRMAN. You are pretty good at trying to remember a specific date and time but I have to tell you, it doesn't square up with whatever the people say, doesn't square up with the testimony that you give today as it relates to those meetings, the reason and the poor excuse for why it was that you went there, and what you said in your own words, and I quote again, "I think if they can say it honestly, the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison."

Those are your words. Jean Lewis didn't make that up. Those are the words on the tape. Those are the words in the transcript. And it certainly comports with the memo that was taken as it related to find out whether or not there was a loss down there.

Ms. BRESLAW. Well, sir, excuse me. I would like to——

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Yes, you can answer.

Ms. BRESLAW. Thank you, sir. I appreciate it.

I guess all I would say in response to that is what I said to Senator Grams a few minutes ago. Whether or not anybody would have

preferred a certain answer, what is clear from my comments to Jean Lewis, and what I believe to be true to this day, is that no one at the RTC was attempting to steer an investigation in any inappropriate direction.

The CHAIRMAN. You were, absolutely. You tried to keep——

Ms. BRESLAW. Absolutely not. Absolutely not.

The CHAIRMAN. —the RTC from reviewing the files.

Ms. BRESLAW. Absolutely not.

The CHAIRMAN. You have memos over here talking about how you contacted people, the way they should not, the RTC shouldn't be undertaking that, let it stay with the people, with your friends over at the FDIC. Absolutely.

As a matter of fact, the fact that you were kept in charge of this, given the incredible—I call it whitewashing of the initial report, finding no conflict, certainly a slipshod job, at least, in saying that there was no conflict when the Rose Law Firm was retained, you absolutely should have been removed. That was an absolute dereliction to keep you in connection with any matter having to do with them. You should have been removed from that. Now, you tried to control it.

I have to tell you something. I can see one letter that does not accurately say, but a number of people and your actions themselves indicate a course of conduct to control this.

Ms. BRESLAW. Well, sir, you have strung together a number of different things. I guess what I would say, first of all, is that I did—I recused myself from issues to do with the Rose Law Firm and Seth Ward on, I believe, January 27, 1994. I did that because I was aware that the FDIC was conducting its review of the Rose Law Firm, and on my own I decided to take myself out of any aspect of the current investigation that could have to do with the Rose Law Firm.

The CHAIRMAN. When did you do that, Counselor?

Ms. BRESLAW. I don't have that document. I think——

The CHAIRMAN. January 27?

Ms. BRESLAW. That sounds right.

The CHAIRMAN. On or about?

Ms. BRESLAW. That sounds right.

The CHAIRMAN. That's about 10 days to 2 weeks after you had tried to get people not to go forward with this investigation. So after you attempted to get people not to go with the investigation, and the investigation is going to proceed in any event, then you recuse yourself.

Ms. BRESLAW. First, I disagree with your characterization of my actions. The FDIC——

The CHAIRMAN. These are not my characterizations. This happens to be in the record. Here, "April A. Breslaw, Madison, retention of Rose Law Firm. It is my understanding that Kansas investigation has attempted to evaluate the decision." Is this your E-mail? These are your words. I didn't make them up. So when you tell me about characterizing, what are you suggesting here? You are saying here that the RTC should not go forward.

Ms. BRESLAW. No, sir.

The CHAIRMAN. You didn't?

Ms. BRESLAW. No, sir. What I am saying there is that——

The CHAIRMAN. I don't want to take the time——

Ms. BRESLAW. —the Kansas Office of Investigations, particularly Mr. Davidson, to my knowledge—excuse me, sir—has no training in legal ethics, that he and his office who have never, in my knowledge, evaluated contractor conflicts issues, that they should not take responsibility for this, because the FDIC was conducting a serious review——

The CHAIRMAN. Your friends. Your friends. Sure. Oh, yeah. Let me just read——

Ms. BRESLAW. No, sir. I have never worked for Jack Smith.

The CHAIRMAN. Let me just read the last line and I'm going to stop the line of questioning because it's, you know, we obviously—but this is yours; this is your E-mail?

Ms. BRESLAW. I can't see what document it is, sir.

The CHAIRMAN. Well, let's get it out.

Mr. CHERTOFF. January 12, 1994.

The CHAIRMAN. January 12, 1994. You have it over there. April A. Breslaw, Madison, retention of law firm, Wednesday, January 12. Do you have that? You have that document, it's TH 1009. I will send it down to you. Here, bring it down. I will give you my copy.

Ms. BRESLAW. Thank you.

The CHAIRMAN. You do have it there, but I understand when there are lots of other things.

Ms. BRESLAW. I am having trouble finding it, but I will keep looking.

The CHAIRMAN. No, here. This young man is going to——

Ms. BRESLAW. Thank you.

The CHAIRMAN. Is that yours?

Ms. BRESLAW. Yes, sir.

The CHAIRMAN. It is yours. You prepared it. It was an E-mail. Who did you send it to?

Ms. BRESLAW. James Thompson, Russell Kaufman, Richard Iorio.

The CHAIRMAN. Who are they?

Ms. BRESLAW. Mr. Thompson had some level of management responsibility in Kansas.

The CHAIRMAN. At where, what agency?

Ms. BRESLAW. The RTC.

The CHAIRMAN. Who are the other people you sent it to?

Ms. BRESLAW. Russell Kaufman, he, at least at the time, was in the legal office in Kansas. Mr. Iorio, of course, was in Kansas.

The CHAIRMAN. What was Mr. Iorio?

Ms. BRESLAW. He is Director of the Investigations Office in Kansas.

The CHAIRMAN. Would you read the last sentence.

Ms. BRESLAW. "In light of all this, I suggest that Investigations"—and that word is capitalized—"Investigations discontinue its inquiry into this matter. The reason being that the FDIC was already looking into this matter, and that in my opinion, the Office of Investigations is not trained or equipped to look into contract or conflict questions."

The CHAIRMAN. Ms. Breslaw, I am simply making the point to you that this letter alone, you might be able to substantiate or try to make a case. But given this, plus the memo from Gary Davidson, investigator, civil fraud, which says quite clearly "April Breslaw"—

he called you for the purpose of finding out whether she knew of any fraudulent activity that was not addressed in the criminal referrals.

"And before I could ask my intended question, April asked if I was conducting an investigation into Madison Guaranty. After acknowledging that I was, she indicated that what she was about to tell me was being stated as politely as she could, April felt"—as politely as you could, you do say these things politely if you could—"April felt I should know there are some RTC people in management positions that would take a dim view of my investigating Madison Guaranty." Now, let me tell you, why would he take that kind of—and in terms of his language, he quotes "dim view." Did he make that up?

Ms. BRESLAW. At best, I think Mr. Davidson misunderstood. I believe I was talking about the fact that the FDIC senior people were conducting an inquiry as to the Rose Law Firm. I don't remember my exact words. If he says "dim view," I will accept the words "dim view."

I believe that the FDIC senior people who were working on the Rose Law Firm inquiry at that time would have not appreciated an additional inquiry by investigators in Kansas who were not trained in legal ethics and who had no knowledge——

The CHAIRMAN. You think it was because of legal ethics. You didn't say that to him.

Ms. BRESLAW. I believe I did. I believe he has misstated this.

The CHAIRMAN. Let me say this to you. Don't you see, here is the recording, and what does the recording say? "I think, if they can say it honestly, that the head people"—here is the—"the head people, Jack Ryan and Ellen Kulka, would like to be able to say Whitewater did not cause a loss to Madison." One—and here you are—and you state this to Ms. Lewis.

You go in there and you talk to her and you are very busy. If it is not of any consequences and you are so rushed, why did you go in there for 45 minutes?

Then, you speak to this fellow—this is a couple weeks earlier—and you say to him, "as politely as she could"—she was going to tell me—that it was being stated, "as politely as she could, April felt I should know there are some RTC people in management positions"—you know, the head, I provided the head—that would take, quote, "a dim view of my investigating Madison Guaranty."

When I hear that testimony, when I have Mr. Iorio who says this is unusual, when this investigator, he sends this to Mr. Iorio—I mean, you don't understand why people would say of course we think you are trying to obfuscate to close this thing and you were doing this because people up top wanted you to do this, they would be happy. Either you came to that assumption or someone told you. Now, who told you?

Ms. BRESLAW. Well, sir, again, I do think that you are melting together a number of different things.

The CHAIRMAN. Absolutely. We are taking the actions that took place and we are saying these are actions that you took, these are letters that you wrote. This is your E-mail in which you say the same thing. You have the—your E-mail says it, your meeting—your

talk with Davidson does, your meeting with Jean Lewis does. Of course, I come to that conclusion.

Ms. BRESLAW. What my E-mail says is that I believe that the FDIC is conducting a serious review of this matter, and that people who I believed were competent—to the best of my knowledge that the project was being handled in a professional manner and that the FDIC was conducting an inquiry, again, as to law firm conflicts issues and that therefore, it was not necessary or perhaps appropriate for Mr. Davidson or the Office of Investigations to begin a parallel inquiry. That is very different than suggesting that somebody wanted a certain outcome to an investigation. What I am saying here is, don't worry about it, because somebody else is working on it.

Also, I would note that Mr. Davidson's memo is dated February 18, 1994. That, by his account, is over a month after the conversation that he references in his memo. So at the very least, over a month later, it is at least possible that somebody could misremember or mischaracterize something. I would also note that Mr. Davidson only makes reference here to one conversation.

The CHAIRMAN. There is no sense pursuing this anymore. I have let you know where I am coming from, as I see it, but I would make this observation: Isn't it interesting that the very organization that you think has the professional abilities, the competence, et cetera, to undertake this, when it reviewed this matter as it relates to whether or not there are any potential conflicts or conflicts as it related to the Rose Law Firm, the FDIC found none. They found none.

When the RTC reviewed the matter—all right. If we want to talk about competence, et cetera—they found that not only was there a conflict that a first-year law student would understand, could see, and could understand and it cried out, the whole firm reeked of it, reeked of it. Did you take a look at that bill? You take a look at what the bill for the services were? For a phony land—a fraudulent land transaction. It was the RTC that discovered it.

So you know, when you say, "In light of this all I suggested investigations discontinue its inquiry into this matter," I have to tell you—and you say that because you thought the FDIC could—sure, the FDIC didn't find anything. A blind man could have found it. They didn't because they didn't want to. You were the lawyer who made the determination. You were the lawyer who hired that firm, and I suggest that it is absolutely irresponsible for you then to come back and make a judgment as it related to what actions you undertook, because if you found that indeed there was a conflict, that would be a situation that you had initially approved. And I understand that. I understand why people don't want to say yes, you know, I didn't realize this. So you just look the other way.

Ms. BRESLAW. Excuse me, sir.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Ms. Breslaw, let me ask a couple of questions and then if you want to make an added comment we would be happy to give you some time to do it.

Ms. BRESLAW. Thank you.

Senator SARBANES. I am not clear in my own mind from this line of comments and connections which the Chairman was making with respect to some of these matters. If you go to the notes by Leekin of the meeting called by Ellen Kulka of March 28—do you have that in front of you?

Ms. BRESLAW. Yes, sir.

Senator SARBANES. Now, if you go down to the fifth paragraph, about which Chairman D'Amato was asking you, where you said, "Mark Gabrellian had asked April to try to form an understanding," et cetera.

Ms. BRESLAW. Yes, sir.

Senator SARBANES. Let me back up for a minute. At the beginning of the paragraph it says, "April says that she stopped by Jean's office"—now that's what you said at this meeting, while they were trying to find out what happened; is that correct?

Ms. BRESLAW. I believe so, sir.

Senator SARBANES. Then "Mark Gabrellian"—you are recounting what had transpired. If I can—apparently Ellen Kulka had asked you tell me what you remember, "Mark Gabrellian had asked April to try to form an understanding," then the next sentence, "April said that she only had a passing knowledge of what that involved, but Jean was the primary person to talk to."

Now, as the Chairman put the question, he interpreted that sentence to mean that is what you told Gabrellian, but as I read this memo, that's what you were reporting to Kulka in terms of what you remembered. Did you tell Gabrellian that you only had a passing knowledge of what that involved, but Jean was the primary person to talk to, or is that a report you gave at this meeting about what your own recollections were?

Ms. BRESLAW. At the time of this meeting, which is March 28, 1994, that is almost 2 months after I went to Kansas, I was explaining to Ellen Kulka what the status of my knowledge had been. At the time that Mr. Gabrellian asked me to look into this issue, both he and I had a passing knowledge of it, because neither he nor I had worked on the criminal referrals.

So I don't recall ever particularly saying to Mark, I have only a passing knowledge, but that truly would have been the case. That was probably the status Mark himself was at on February 1 or 2. But by March 28, I think you are right, in the context of this meeting, I was describing to Ellen what my state of mind had been back when I went to Kansas.

Senator SARBANES. But those items then were things you were telling them at this meeting, those weren't things you had told Gabrellian at the time he asked you to try to form an understanding; is that correct?

Ms. BRESLAW. Yes, sir.

Senator SARBANES. Well, I want to be clear about that because the way the questioning went before it suggested that this is what you told Gabrellian, but as you worked through this paragraph, these seem to be reporting on what you had told Kulka at this meeting in terms of what your recollections were. Is that correct?

Ms. BRESLAW. Yes, sir.

Senator SARBANES. All right. Now, on the memo about investigations discontinuing its inquiry, that section, would you go to the previous paragraph and read that.

Ms. BRESLAW. Is that the paragraph that is kind of hole-punched and says "probably"—"however, it appears"?

Senator SARBANES. No. "Further, you should be aware." Isn't that a paragraph just before, "In light of all of this"?

Ms. BRESLAW. Yes, I see that paragraph. Thank you.

Senator SARBANES. Why don't you read that to us. Just go ahead and read it out.

Ms. BRESLAW. "Further, you should be aware that the FDIC is conducting its own investigation of this matter. Trial attorneys from their special litigation unit are in the process of both evaluating relevant documents and interviewing witnesses. By all indications, this project is being handled in a professional manner. When they conclude they expect to issue a public report. If the public is getting it, it should certainly be available to Kansas legal and investigations."

Senator SARBANES. Go on with the rest.

Ms. BRESLAW. "In light of all this I suggest that Investigations discontinue its inquiry into this matter."

Senator SARBANES. So you were premising that on the FDIC inquiry that was being made?

Ms. BRESLAW. Yes, sir.

Senator SARBANES. The Chairman is making a point that in the end, the FDIC inquiry apparently didn't pick up some relevant information which later was picked up, but that was not the case at the time; is that correct?

Ms. BRESLAW. That's correct.

Senator SARBANES. At the time that you did this—is this an E-mail, I take it?

Ms. BRESLAW. Yes, sir. I would also add to that that when the Offices of Inspector General issued their reports this summer, that would be July or August 1995, over a year and a half after this E-mail was written, it is my understanding that by then, those offices had fought through battles with the Rose Law Firm over document production, had sent subpoenas to them, had even taken steps to enforce subpoenas in court, so that the amount of information that the Offices of Inspector General had a year and a half later, was much more than what the FDIC legal division had in the winter of 1994.

Sir, could I—just in response to what Senator D'Amato said before, I do think it is important to understand that within the RTC there is a huge difference between the Office of Investigations, which includes Mr. Iorio and Jean Lewis and that whole group out in Kansas on one hand, and on the other hand the Offices of Inspector General.

It is my understanding that the entities which have done the most thorough review of the Rose Law Firm are the joint FDIC and RTC Offices of Inspector General. So to the extent that the Senator suggests that somehow I was trying to prevent the RTC from looking into this, clearly there is a distinction between the RTC Office of Investigations and the RTC Office of Inspector General.

The last thing I would say is that the law firm is responsible for disclosing conflicts of interest; that's really not the client's job. And I think in this instance, unfortunately what has come to light over time is that information was not disclosed by the Rose Law Firm to me and to other people. I think that it has to be understood that there was a lot of information that I did not have and that others did not have when various decisions were made.

The CHAIRMAN. I think Senator Grams——

Senator GRAMS. I wanted to follow up with a statement, Mr. Chairman, about some of the line of questioning I had for Ms. Breslaw, really trying to get at who was telling who, or was it her own decision, or was somebody trying to influence her, but as you pointed out, and I wanted to comment on that and the phrase from Mr. Davidson in his letter to Mr. Iorio when he said, "April felt I should know there are some RTC people in management positions."

And other memos where she refers to "head people" and others where she said Mr. Ryan, Ms. Kulka, these are trying to intimidate. These are phrases that are used all the time in an effort, I believe, to influence or to intimidate the direction of this investigation. I had the same question and the question was, was this your own conclusion or was somehow this conveyed or suggested to you to pass this on or to find out if there was a way to whitewash Whitewater?

Ms. BRESLAW. Well, sir, I really do believe that Mr. Davidson's memo from February 18, 1994, is not accurate. I believe that what we discussed was the FDIC's look at Rose Law Firm conflicts issues, and I know now we have been over that at some length, but I believe what I was trying to convey to him is that it was not necessary for him to work on that particular project, the contracting conflicts project, because another entity had taken responsibility for it and was, as best as I knew, doing a professional job of it.

At the time I didn't know what their report would turn out to be, but—so I really think that this memo of Davidson's is in error.

Senator GRAMS. Why didn't Mr. Davidson mention Rose Law Firm? Why did he only mention the investigation of Madison Guaranty? He didn't say the investigation of Rose Law Firm in connection with Madison?

Ms. BRESLAW. No, he did not and that is troubling you.

Senator GRAMS. Maybe that is something we should ask Mr. Davidson and find out.

Ms. BRESLAW. Well, that would be very interesting because as I testified this morning——

Senator GRAMS. You are remembering one thing that he wrote different?

Ms. BRESLAW. That's right. That's true. Our recollections are apparently different here, and again I would emphasize that to the best of my knowledge, at the time that he gives for our conversation, which is January 13 or 14, to my knowledge, there was no open Madison civil investigation, except for the inquiries that had to do with the Rose Law Firm.

In fact, Mr. Iorio had just submitted a report to Tom Hindes and Jim Dudine in December 1993, in which Mr. Iorio said, we have looked at it again, the targets don't have any money, there is no

point in going forward. So, I don't understand myself the whole context of this memo.

I don't understand why Davidson would suggest that Iorio told him on January 11 to start another Madison investigation when Iorio had just sent in a memo—a report to the senior people in DC, Tom Hindes and Jim Dudine, recommending against doing anything further because the targets had no money. It is not plausible to me that suddenly the targets gained money between December 1993 and January 11, 1994. Mr. McDougal had been discharged in bankruptcy. So this whole memo is very puzzling to me.

Senator GRAMS. They were the targets at the time but there was others referenced as possible witnesses and that, of course, was the First Family, so——

Ms. BRESLAW. Perhaps in the criminal referrals. I don't recall that they were mentioned in the civil report.

Senator GRAMS. Mr. Chairman, I have no more questions.

The CHAIRMAN. Thank you very much. There are no further questions, that I am aware of, that any of the Members or Counsels want to put to the panel.

I want to thank the panel for coming in.

Let me just make this assertion. Ms. Yanda, I am not aware of anyone on this Committee or any staff who ever questioned you or your activities or your competence, et cetera. I have to tell you that I was a little bit taken back but obviously if you've seen things written in the media, et cetera, heard things by your initial presentation, certainly calling you in is in no way—nor should it impugn you or your integrity, Ms. Carmichael, or any of the witnesses. We are trying to get the facts.

I just want you to know that. And I want to you know that by your appearance here, certainly no one should draw any conclusions that you have done anything other than what you have said. I hope you understand that, and it makes you feel—gives you some better comfort level.

Senator SARBANES. Mr. Chairman, let me just add to that, because I was taken aback at the beginning of Ms. Yanda's statement this morning but then I went back and I looked at Ms. Lewis' statement yesterday, and Ms. Lewis said yesterday in her opening prepared statement, I am quoting Ms. Lewis now, "RTC Professional Liability Section Chief Julie Yanda obstructed that effort with her unprecedented demand that her staff first conduct a legal review of the referrals."

The CHAIRMAN. I can understand then why Ms. Yanda would be so upset. I was not fully cognizant of that, but I certainly want publicly to put on the record there is no one on this Committee who impugns you or your integrity, or your undertaking your job. Ms. Carmichael, the same. We let the facts fall where they are.

So I just think it is—in an effort to be candid and forthright with you, I want you to understand that. I was not aware of why you felt as strongly as you did. I can certainly understand that if actions that you have undertaken in good faith are characterized in that manner, and certainly the fact that on June 17 there was a procedure that then implemented this and the fact that I think you took something like 9 days, or whatever it was, in the review, that certainly does not appear to this Senator to be any actions that

should be characterized as obstruction. I want you to understand that. I certainly understand now better why you were upset.

We thank all the witnesses for coming in. Thank you.

We are going to take a 2-minute break before we decide what panel to move forward, because we have some witnesses who have problems with time, et cetera, so we are going to see what we can do on this.

[Recess.]

The CHAIRMAN. Let's start with Counsel, Majority and Minority, the likelihood of being able to work through the panels, and it would appear extremely unlikely that we would be able to make enough progress with the various panels. There are some very real scheduling conflicts, for example, Paula Casey, U.S. Attorney will be coming from out of town and she is in the midst of a trial and a judge has—they will not have session tomorrow, so that will make available her appearance. Mr. Hubbell is ready to testify. Mr. Coleman is coming in from out of town. We have Mr. Irons and Mr. Banks and that panel.

What we will do, at this point, because it does not appear that we would make sufficient progress with these panels without running well into the evening, is adjourn until tomorrow morning at 9:30 a.m. We will start at 9:30 a.m. promptly. Both Counsels are going to attempt to keep their opening statements down somewhat and we are going to see if we can't take these four panels.

So we stand in recess until tomorrow at 9:30 a.m.

[Whereupon, at 4:30 p.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Friday, December 1, 1995.]

[Appendix supplied for the record follows:]

Michael Chertoff
Richard Ben-Veniste
November 29, 1995
Exhibit

Request

Paragraph (iii), letter from Chairman D'Amato to Jane Sherburne, November 14, 1995:

"any entries or exits from the White House Residence between July 20 and July 28, 1993, by any of the following persons:

1. *Robert Barnett*
2. *Diane Blair*
3. *James Blair*
4. *James Lyons*
5. *Amy Stewart*
6. *Harry Thomason*
7. *Susan Thomases*
8. *Margaret Williams*
9. *Betsey Wright."*

Response

1. Robert Barnett

July 27, 1993	Up to 2nd floor at 3:03 p.m.[1] Down at 4:30 p.m.

2. Diane Blair

July 26, 1993	Up at 10:35 p.m.[2]
July 27, 1993	Down at 9:25 a.m. Up to 3rd floor at 4:19 p.m. Down at 4:34 p.m. Up to 3rd floor at 5:18 p.m.
July 28, 1993	Down at 9:00 a.m. Up to 3rd floor at 4:29 p.m.[3]

---

[1] Usher records show entry time as 3:00 p.m.

[2] Usher records show entry time as 10:50 p.m. and the destination as the third floor.

[3] Usher records show entry time as 4:28 p.m.

3. James Blair

No records.

4. James Lyons

No records.

5. Amy Stewart

No records.

6. Harry Thomason

No records.

7. Susan Thomases

July 27, 1993	Up to 2nd floor at 3:08 p.m.[4] Down at 4:31 p.m.[5] Up to 2nd floor at 8:19 p.m.

8. Margaret Williams

July 22, 1993	Up at 7:25 p.m. Down at 7:32 p.m.
July 25, 1993	Up to 2nd floor at 2:36 p.m. Down at 2:50 p.m.
July 27, 1993	Up to 2nd floor at 10:31 a.m. Down at 12:05 p.m. Up to 2nd floor at 1:35 p.m. Down at 2:25 p.m. Up to 2nd floor at 3:20 p.m. Down at 4:43 p.m.

9. Betsey Wright

No records.

---

[4] Usher records show entry time as 3:10 p.m.

[5] Usher records show exit time as 4:30 p.m.

Bell Atlantic

Bell Atlantic Network Services, Inc.
One Bell Atlantic Plaza
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
703 974-1055
FAX 703 974-0744

Douglass J. McCollum
Assistant Compliance Officer

November 28, 1995

Lance Cole, Esquire
Democratic Deputy Special Counsel
Viet D. Dinh, Esquire
Associate Special Counsel
Special Committee to Investigate
Whitewater Development Corporation and Related Matters
United States Senate
Committee on Banking, Housing, and Urban Affairs
Dirksen Office Building, Room 534
Washington, D.C. 20510-6075

Re: Telephone Number (202) 628-7087

Dear Messrs. Cole and Dinh:

This is to inform you that after an additional review of our records, we are still unable to identify the person(s) or entity and the address assigned to this telephone number in July 1993. We have also confirmed that this was not a number used by our cellular affiliate, Bell Atlantic Mobile, during that same time period.

In our conversation on November 16, you asked for an explanation why Bell Atlantic is unable to identify the person and address assigned to that number in July 1993.

When a subpoena is served for information about an active account, we have several ways to identify the account and produce the records. Our records are indexed by the name and address of the person or entity billed for the service and the number assigned to that person or entity. If the subpoena includes either the name and address or the number, we can respond to the subpoena by searching our billing records. If an account has more than one number, our index usually uses the main number for the customer. The other number(s) are considered auxiliary lines, and are not separately indexed. We can not independently access the records for these auxiliary (other) lines from the billing records without the main number. To produce information about auxiliary lines in active service, we search other records, such as our engineering/facility, repair, or directory records, to determine where the service is located and use that information to guide our search for other records.

(202) 628-7087 was not assigned to any customer and was not working at the time the subpoena duces tecum of the Special Committee was served. This meant that we had no current billing information. If that number had been the billing number when the number was last in active service, we may have retained those records in our "archives." We searched our archives but found no records. This meant that we had to use other records to respond to the subpoena.

o

The Special Committee wanted information that was nearly two (2) years old. We only retain those records we need to run the business or we are required to keep by federal or state regulation. Otherwise, we would be overwhelmed by records we no longer need. The fact that the information was not current hampered our ability to search other records, such as our engineering/facility, repair, or directory records, to determine where the service went and use that information to guide our search for other records.

Nevertheless, we examined our records to see if this number was part of a larger group of numbers that had been assigned to a company providing cellular or paging services. It was not. We then examined our records for numbers close in sequence to (202) 628-7087 to see if this number was an auxiliary line to one of those numbers. It was not. We reviewed our central office frame records and our line assignment records. This was unproductive. We also reviewed our records for July 1993 to see if we had to repair or make any changes on that number. This examination was also unproductive.

In light of the foregoing, we speculate that the number was an auxiliary number for which we did not maintain a separate billing record.

I trust that this answers any questions you may have. If not, please contact me.

Very truly yours,

Douglass J. McCollum

RTC

Kansas City Office
INTEROFFICE MEMO

DATE: February 18, 1994

TO: L. Richard Iorio
Field Investigations Officer

From: Gary Davidson
Investigator/Civil Fraud

Subject: #7236 - Madison Guaranty Savings and Loan
Little Rock, Arkansas
Discussion with April Breslaw/PLS

On January 11, 1994, you requested that I conduct a preliminary investigation into Madison Guaranty, for possible Civil Fraud claims. Procedures for conducting a Civil Fraud investigation require a systematic approach of gathering information by reviewing available documentation and interviewing RTC personnel. On January 13th or 14th, I called the assigned PLS attorney, April Breslaw, for the purpose of asking whether she knew of any fraudulent activity that was not addressed in the Criminal Referrals.

Before I could ask my intended question, April asked if I was conducting an investigation into Madison Guaranty. After acknowledging that I was, she indicated that what she was about to tell me was being stated as politely as she could. April felt I should know there are some RTC people in management positions that would take a "dim view" of me investigating Madison Guaranty. She also advised that I should be very careful of who I talk to and what I say, because of the people associated with Madison Guaranty.

After hearing April's comment, I stated that I had read the Criminal Referrals and was aware of the names associated with Madison Guaranty. I also stated that I was informed of the sensitivity of the investigation into the institution. I then asked the question of whether she knew of any fraudulent activity other than what is addressed in the Criminal Referrals. April indicated that there was no other fraudulent activity to her knowledge, and we ended the conversation.

HOUSE

GD0005

March 28, 1994

NOTE TO FILE:

On Friday, March 25, 1994, Ellen Kulka (General Counsel) had a meeting with Tom Hindes and April Breslaw (PLS). This meeting was the result of Cong. Jim Leach using April Breslaw's name on the House floor the afternoon before (March 24). The meeting commenced at approximately 3:45 p.m.

Ellen started by saying -- with respect to conversations that you and Jean Lewis had, and subsequent conversations, tell me what you remember.

April Breslaw began by saying that she only had one conversation with Jean Lewis in Kansas City and she had never met her before that day. April says she believes that she had talked to her by telephone one or two times before, but since Jean handles criminal investigations and April is on the civil side, their conversations were rare. April says that she was sent to Kansas City with Gary Watts from the Investigations Section. She say she spent most of the day in the converence room looking at records, Board minutes and work papers on transactions. At that time we were trying to establish the loss figures on transactions.

Gary was working on spreadsheets. During the course of the day they would come up with questions and call in different investigators to ask their questions. April, Gary and all the investigators, with the exception of Jean Lewis, went to lunch together that day.

At the end of the day, April says that she stopped by Jean's office. Mark Gabrellian had asked April to try to form an understanding about whether the White Water checking account had caused a loss. April said that she only had a passing knowledge of what that involved, but Jean was the primary person to talk to. April said that she went to Jean's office. April said that Jean considers her role very, very, very important. Jean insisted that she close the door. April stated that she thought this was a very secretive way to handle the meeting.

April stated that she sat down and talked. In her notes, she puts the time of the meeting at about 3:50 and ending at approximately 4:30 p.m. It was definitely the end of the day.

April said that they began talking. Because the two of them had never met face-to-face before, the first part of the conversation was just "chitty-chat" like how die you get into RTC, or where die you work before. April said that she then asked Jean how it had come to happen that she had decided to delve into Madison for criminal referral process in 1992. April said that by this time, the agency had lost the D & O case, the bond investigation was settled and she does not recall looking at other criminal

FSC
#31C

LAW OFFICES OF
ROSE LAW FIRM
A PROFESSIONAL ASSOCIATION
120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 378-0131

98252

GUARANTY SAVINGS/LOAN
JOHN LATHAM, PRESIDENT
2ND AND MAIN STREETS
LITTLE ROCK, AR 72201

JANUARY 30, 19[illegible]

PLEASE MAKE CHECKS PAYABLE TO ROSE LAW FIRM (TAX ID #71-0438614) - RETURN THIS STUB WITH YOUR CHECK

FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1984 BY H. W. CLINTON, T. THOMAS, P. DONOVAN, K. SMITH AND J. BIRCH:

MATTER: 5 - I.D.C.

REVIEW CONTRACT FOR SALE; TELEPHONE CONFERENCE WITH SETH WARD AND CHARLIE COOK, DARYL DOVER, ALTON BOWEN AT BEACH ABSTRACT, PEGGY ROGERS AND STEVE WADE; MAKE CHANGES IN DOCUMENTS; REVIEW CHANGES IN AGREEMENT; CORRESPONDS TO ALL PARTIES; ATTEND I. D. C. BOARD MEETING; PREPARE CORPORATE RESOLUTIONS; REVIEW TITLE COMMITMENT; ATTEND CLOSING; REVIEW BILL OF ASSURANCES; MEETINGS WITH SETH WARD, BOB WILSON AND CHARLIE COOK; RESEARCH ON WHAT APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE SEWER AND WATER FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AND COUNTY AGENCIES HEAD ABOUT UTILITY STATUS; CONFERENCES WITH SETH WARD REGARDING PURCHASE FROM BRICK LILE AND PROPOSED INDUSTRIAL DEVELOPMENT ON SITE; RESEARCH IN STATE LAW GOVERNING LIQUOR PERMITS; RESEARCH AT COUNTY CLERK'S OFFICE AND ELECTION COMMISSION; TELEPHONE CONFERENCES WITH ELECTION COMMISSION; ADVERSOUS TELEPHONE CONFERENCES WITH DARYL DOVER

TOTAL FOR SERVICES	$4,651.50	
DISBURSEMENTS		
ONE COUNTY MAP		2.35
XEROX COPIES		16.50
DISBURSEMENTS TOTAL	$18.85	
TOTAL MATTER 5:		$4,670.3[illegible]

To: James G. Thompson@EXECFSC@RTCKC
Russell F. Kaufman@Legal-Exec@RTCKC
L. Richard Iorio@INVEST-1@RTCKC

c: Thomas L. Hindes@Legal-pls@RTCDC
Julie F. Yanda@LEGAL-PLS@RTCKC
James R. Dudine@Oper-inv@RTCDC

Bcc:
From: April A. Breslaw@Legal-pls@RTCDC
Subject: Madison: Retention of Rose Law Firm
Date: Wednesday, January 12, 1994 9:59:22 CST
Attach:
Certify: N
Forwarded by: Julie F. Yanda@LEGAL-PLS@RTCKC

It's my understanding that Kansas Investigations has attempted to evaluate th decision to hire the Rose Law Firm to represent the government against Frost Co., the former auditors of Madison Guaranty. It's my further understanding that this project was initiated in an effort to be prepared to respond to outside inquiries about this matter.

So that there is no misunderstanding or confusion, you should be aware of several things. First, there is no dispute about the fact that I was the staff attorney responsible for Madison in 1989. There is no dispute about the fact that I hired the Rose Firm to work on the Frost accounting malpractice case. As a routine part of managing that litigation, I evaluated the bills submitted by the Rose Firm for work performed on that case. As a routine part of their jobs, my supervisors evaluated and approved payment of these bills. There is no need to investigate these facts: they are true and undisputed.

However, it appears that there is confusion about other issues. Most importantly, it appears that some RTC personnel do not understand that the decision to hire the Rose Firm was NOT made by the RTC. Instead, it was made when I was employed by the FDIC Directors and Officers Liability Section.(At the time, neither the RTC nor the Professional Liability Section existed.) The FDIC has taken responsiblity for this decision. In practical terms, this means that the FDIC is responding to media, FOIA, and Congressional inquiries about this matter. Consequently, we have no reason to think that the RTC will be called upon to explain it.

Further, you should be aware that the FDIC is conducting its own investigation of this matter. Trial attorneys from their Special Litigation unit are in the process of both evaluating relevant documents and interviewing witnesses. By all indications, this project is being handled in a professsional manner. When they conclude, they expect to issue a public report. If the public is getting it, it should certainly be available to Kansas Legal and Investigations.

In light of all of this, I suggest that Investigations discontinue its inquiry into this matter.

HOUSE

TH1009

SM0425

CONTROL NUMBER MCADOO [Name and Residence Address]
ACCOUNT NUMBER 664 [Phone Number]
BILL DATE 19930723

PAGE 000008

ITEMIZED CALLS FOR AT&T

NO	DATE	TIME	PLACE CALLED	AREA	NUMBER	*	MIN	AMOUNT	
7	7 20	913PM	WASHINGTON DC	[Williams Res.]		E	16	2.40	#V
8	7 20	1003PM	CARPINTRIA CA	[Thomason Res.]		E	4	.60	#V
9	7 20	1019PM	NEW YORK NY	[Thomases Res.]		E	20	3.00	#V
10	7 20	1041PM	WASHINGTON DC	202	628 7087	E	10	1.50	#V
11	7 20	1052PM	ALEXANDRIA VA	[Huber Res.]		E	4	.60	#V
12	7 20	1146PM	WASHINGTON DC	[Family]		N	2	.26	#V
13	7 21	1209AM	WASHINGTON DC	[White House Res.]		N	13	1.69	#V
14	7 21	756AM	WASHINGTON DC	[WH Switchboard]		N M	37	8.11	#V
15	7 21	850AM	WASHINGTON DC	[DOJ Command Ctr]		D	1	.23	#V
16	7 21	1044AM	TAHOE CITY CA	[Sunnyside Hotel]		D	15	3.60	#V
17	7 21	1104AM	WASHINGTON DC	[Anthony Res.]		D	1	.23	#V

"%" - AT&T SELECTSAVER PLAN-CHARGES NOT INCLUDED IN TOTAL
"V" - AT&T SELECTSAVER PLAN-5% DISC CALLS-CHARGES NOT INCLUDED IN TOTAL

PAGE 000009

NO	DATE	TIME	PLACE CALLED	AREA	NUMBER	*	MIN	AMOUNT	
18	7 21	414PM	WASHINGTON DC	[DOJ Command Ctr]		D	1	.23	#V
19	7 21	540PM	WASHINGTON DC	[WH Switchboard]		E	2	.30	#V
20	7 21	544PM	WASHINGTON DC	[DOJ Command Ctr]		E	2	.30	#V
21	7 21	645PM	WASHINGTON DC	[Lindsey Off.]		E	12	1.80	#V
22	7 21	902PM	WASHINGTON DC	[Jordan Res.]		E	13	1.95	#V
23	7 21	917PM	MIAMI FL	[Family]		E	40	6.00	#%
24	7 22	657AM	WASHINGTON DC	[Mansion on O St.]		N	3	.39	#V
25	7 22	218PM	MIAMI FL	[Family]		D	21	5.04	#%
26	7 22	1019PM	WASHINGTON DC	[WH Switchboard]		E	1	.15	#V

"%" - AT&T SELECTSAVER PLAN-CHARGES NOT INCLUDED IN TOTAL
"V" - AT&T SELECTSAVER PLAN-5% DISC CALLS-CHARGES NOT INCLUDED IN TOTAL

Interrogatories Propounded to Hillary Rodham Clinton Pursuant to Senate Resolution 120

INSTRUCTIONS: Please answer the following questions under oath, under pains of perjury and contempt, and to the best of your recollection, information, and belief. Please have your answers notarized by a qualified notary public.

QUESTION 1: Did you call the telephone number 202-628-7087 from the Rodham residence in Little Rock, Arkansas, at 10:41 p.m. Central Daylight Time on July 20, 1993?

QUESTION 2: If the answer to question #1 is "no," who called the telephone number 202-628-7087 from the Rodham residence in Little Rock, Arkansas, at 10:41 p.m. Central Daylight Time on July 20, 1993?

QUESTION 3: To whom did you, or the party identified in the answer to question #2, speak at the telephone number 202-628-7087 for 10 minutes beginning at 10:41 p.m. Central Daylight Time on July 20, 1993?

QUESTION 4: What is the identity and address of all persons, corporations, or entities registered or having access to the telephone number 202-628-7087 on July 20, 1993?

Given under my hand, by order of the Special Committee to Investigate Whitewater Development Corporation and Related Matters, this 30th day of November, in the year of our Lord one thousand nine hundred and ninety five.

_____

Alfonse M. D'Amato

Chairman, Special Committee to Investigate Whitewater Development Corporation and Related Matters.

Date: Friday, August 13, 1993 8:21 am
From: CRM02(CARVER)
Subject: Assoc AG's Meeting at the RTC

Larry --

From a sketcy report of the Associate AG's meeting with RTC Professional Liability Section staff a few days ago, it appears that he got to know some of those folks when he was retained as fee counsel. This led to the informal meeting.

In response to an inquiry from RTC staff, he announced that a Special Counsel has been selected, but the necessary FBI background investigation has not been completed. He told the RTC staff, who had urged that a Special Counsel be appointed, that the Special Counsel could be publicly named in September. (Is Gerry Stern the selectee? If not, who has been selected?)

The Assoc AG mentioned that the President wants all judge slots filled within a year. He also mentioned that if the RTC should receive demands for document production from a U.S. Attorney's office which the RTC believes is unreasonable, the RTC should feel free to let him know. (In response to this invitation, one of the RTC senior staffers told the Assoc AG that the RTC believes that it has an excellent relationship with the DOJ. The RTC staffer commented that only one U.S. Attorney (the U.S. Attorney in Denver) had been difficult to deal with, but he has left the USAO.

The Assoc AG emphasized that the DOJ is interested in working harmoniously and productively with the RTC.

To: Mark Gabrellian@Legal-pls@RTCDC
Cc:
Bcc:
From: April A. Breslaw@Legal-pls@RTCDC
Subject: senate doc's
Date: Tuesday, June 28, 1994 15:31:45 EDT
Attach:
Certify: N
Forwarded by:

I have the impression that we're in the midst of producing doc's to the SEnate banking committee in anticipation of the hearing scheduled for the end of July. If anybody is considering producing anything that has anything to do with my conversation with Jean Lewis, I'd like to talk about whether it's responsive to the committee's request. It's my understanding that the senate rejected amendments which might have brought this incident into the scope of the hearings.

At a personal level, I strongly request that everybody be careful not to inadvertently produce anything to do with the Lewis conversation. Such production could very well throw me into another situtaion in which I'm blindsided by crazy members of Congress who are playing to the press. If that happens, I'm not going to let myself get slammed. I will start telling my side of the story to the press and the chips will just have to fall where they may.

HOUSE
MG0472

mark.

I think if they can say it honestly, the head people -- Jack Ryan and Ellen Kulka, would like to be able to say 'Whitewater did not cause a loss to Madison.' We don't know, you know, what Fiske is going to find and we don't offer any opinion on it. But the problem is nobody has been able to say to Ryan and Kulka, 'Sure, say that, that's fine.' Because, you know, even though Whitewater did not have a loan it's been these kinds of things that mean there was a loss that is hidden so that...

I don't know if there's any other way to research, you know, whether -- and I'm sorry to ask the same question that I'm sure others have asked -- did Whitewater cause a loss. How we could get to a more definitive answer. I mean, I guess from -- (Inaudible.) -- I looked at them quickly and I'm sure you're much more into them but -- (Inaudible.) -- more research is needed to trace proceeds. So would you assume that the special prosecutor is probably out trying to trace the end of the Whitewater -- (Inaudible.) --

PARTICIPANT (female): Based on what Mr. Fisk has said to the press, which is absolutely nothing, you and I are in the same boat on that one.

PARTICIPANT (female): Yeah.

PARTICIPANT (female): I have no idea what he's doing.

All I know at this juncture is what the allegations were -- (Inaudible.) --

PARTICIPANT (female): Yeah.

PARTICIPANT (female): And Whitewater development was a part of a whole. There were 12 McDougal controlled entities -- and I'm calling them McDougal controlled because I don't know how much control is exerted over any of these other entities by any of McDougal's partners. I know that some money came in and out and went to various parties -- Keith Smith, Jim Guy Tucker -- and it's real difficult to take Whitewater as one piece of this -- (Inaudible.) --

PARTICIPANT (female): Yes. That's a good point. That's a good point.

PARTICIPANT (female): We're trying to

Bres law

To: John E. Ryan@CEO@RTCDC
Ellen B. Kulka@Legal-sc@RTCDC
Thomas L. Hindes@Legal-pls@RTCDC
Mark Gabrellian@Legal-pls@RTCDC
Peter E. Knight@OGR@RTCDC
Cc:
Bcc:
From: April A. Breslaw@Legal-pls@RTCDC
Subject: Congressman Leach's statement
Date: Thursday, March 24, 1994 17:43:33 EST
Attach:
Certify: N
Forwarded by:

As you may know, Congressman Leach made a statement regarding the so-called "Whitewater" affair on the floor of the Congress today. At one point, he made specific reference to me. I want you to know that I categorically deny making the statement which he attributed to me. Mr. Leach said:

> On February 2, 1994, the day Roger Altman briefed the White House on Madison Guaranty, RTC Senior Attorney April Breslaw visited the Kansas City Office and said that Washington would like to say that Whitewater caused no losses to Madison.

I have never met Mr. Altman. I did not know that he was briefing the White House on February 2, 1994. On that date, I had not met either Ms. Kulka or Mr. Ryan. I did not say that anyone from Washington "would like to say" anything.

I would note that Ms. Lewis purports to be a "criminal" investigator. As such, she may not understand that in order to pursue a civil case, the plaintiff must be able to demonstrate that it sufferred a loss. (Of course, if a criminal defendant is shown to have caused monetary loss, he or she may be sentenced to make restitution if he or she is convicted. In that sense, "loss" is relevant to criminal matters.)

In any event, I met with Ms. Lewis briefly to see if she could shed some light on this element of the civil investigation. At the time, she seemed nervous and uncomfortable about the fact that her criminal referrals do not resolve the loss issue. She could not answer the main questions that I asked: What was the ending balance of the Whitewater checking account? Was it left in overdraft status, which would have meant that a loss occurred?

It's my opinion that the defensive, political slant to her statement is simply an effort to draw attention away from her embarrassment over failing to document a key element of the investigation.

If at all possible, I request that the RTC issue a statement which clarifies the fact that I am not a political appointee, that I did not act at the request of political appointees, and that I categorically deny making the statements attributable to me. Thank you for considering my request.

proceedings against McDougal. One or two had already pled guilty. In the Spring of 1992 McDougal was acquitted.

As we were talking, I asked Jean why she went back to Madison. It seemed to me that Jean was defensive. She said that the Presidential campaign news accounts about Madison had caught her attention. She was defensive - taking institutions out of order, going back in. She admitted that she took it out of order. April said that she could not remember how she explained it.

As a side note, April said that there were rumors that Jean is very active in the Republican party. April stated that she does not know if this is true. She said that if Jean had received a republican lean, it might be reason to take a closer look.

April said that she told Jean that we had been getting inquiring in Washington about Whitewater. She said she told her that Ellen and Jack Ryan had been getting inquiries (she said that she was thinking of the tolling agreements and the D'Amato letter.) April said that this was the only point where she mentioned Ellen Kulka and Jack Ryan.

April says that she denies saying that Ellen Kulka or Jack Ryan wanted a particular outcome or wanted the loss numbers to be anything. She said that part of her statement is offensive to me personally.

April said the two of them proceeded to talk about what is loss. She said that she looked at her notes and most of the conversation was devoted to Jean explaining her theory of loss. Another 15 minutes were devoted to Jean discussing the Clintons and their relationship to McDougal, and how the Clintons should have known what a bad person McDougal was and how McDougal was fishy with investments. April said that she did not respond to Jean's comments. April said the only time she challenged Jean was when she said that Bill Clinton, being Governor of Arkansas, must have known that the Savings and Loan was involvent. April said that she took issue and said that from the private sector point of view the S&L was not insolvent. April said that the purposedly did not want to get into a debate with Jean -- she only wanted factual information. April said that the day was very strange.
April said that the investigators seemed to have a negative view of the Rose Law Firm, and April had hired the Rose Law Firm. April said that she was determined to be calm and professional and make a conscious effort not to pick any fights or have anything unpleasant happen because she was thinking long-term that an investigation might be in the works. She said that she did not make any notes of this conversation with Jean.

Ellen asked April if she thought the conversation had been recorded. April answered no and said that if the conversation was recorded, she was not advised that it was being recorded.

Ellen asked her how did she know that the investigators were

THE WHITE HOUSE
WASHINGTON

November 29, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
Richard Ben-Veniste, Minority Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Gentlemen:

This letter is a further response to the Chairman's request of November 14, 1995, the first day of the government furlough. We specifically address here Paragraph (iii) of the Chairman's request, which seeks records that reflect entries into or exits from the White House Residence during the period July 20 through July 28, 1993, by certain specified individuals.

As you may appreciate, records reflecting movements of the First Family and other individuals in the White House Residence are extremely sensitive. Accordingly, we have extracted from these records all information responsive to the Chairman's request and set it forth on the attached exhibit.

We trust that the Committee will consult with us if it has further questions about this information.

Sincerely yours,

Jane C. Sherburne
Special Counsel to the President

Attachment

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

FRIDAY, DECEMBER 1, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 9:35 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Our first witness is Mr. Randolph Coleman. Mr. Coleman, would you stand for the purposes of taking the oath.

[Whereupon, G. Randolph Coleman was called as a witness and, having first been duly sworn, was examined and testified as follows:]

The CHAIRMAN. Mr. Coleman, if you have a prepared statement or anything that you would like to say to the Committee, we would be pleased to receive it at this time.

SWORN TESTIMONY OF G. RANDOLPH COLEMAN ATTORNEY, LITTLE ROCK, ARKANSAS

Mr. COLEMAN. Senator D'Amato, I don't have any statement to make. I was asked to be here to answer questions, and I am ready to do so as best I can.

The CHAIRMAN. OK. Then we'll proceed.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Coleman, would you tell us, very briefly, a little bit about your background.

Mr. COLEMAN. I am a licensed attorney in the State of Arkansas since April 1970. I spent 4 years in the JAG Corp with the U.S. Air Force; and in 1974 went into private practice in Little Rock, Arkansas. I remained in private practice until approximately November, December last year, at which time I went into private business.

Mr. CHERTOFF. When you were in private practice, Mr. Coleman, did you practice predominantly in the area of civil cases or criminal cases, or both?

Mr. COLEMAN. For my tenure in the U.S. Air Force, I prosecuted criminal cases for the bulk of that time. The first several years in private practice, I defended criminal cases. I would say that my practice slowly gravitated more toward the civil arena than it did the criminal arena. I retained some ongoing activity in what is commonly referred to as white collar criminal cases, and that type practice.

Mr. CHERTOFF. When you were in practice doing white collar criminal cases, did you have occasion to be dealing with the U.S. Attorney's Office in Little Rock from time to time?

Mr. COLEMAN. Yes, sir, I did.

Mr. CHERTOFF. Did you know Fletcher Jackson, for example?

Mr. COLEMAN. Yes, sir, I did.

Mr. CHERTOFF. Had you dealt with him on cases?

Mr. COLEMAN. I had dealt with Fletcher Jackson on cases prior to 1993, yes.

Mr. CHERTOFF. Did you know Paula Casey before she became the U.S. Attorney?

Mr. COLEMAN. Yes, I did.

Mr. CHERTOFF. How did you know her?

Mr. COLEMAN. From association in the legal community there in Little Rock, Arkansas. Paula and her husband and my family were neighbors for a few years, but basically through the associations in the legal community there in Little Rock.

Mr. CHERTOFF. Did you know any of the partners or lawyers at the Rose Law Firm when you were in practice?

Mr. COLEMAN. Over the years, yes, sir.

Mr. CHERTOFF. Did you know Mr. Kennedy?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Did you know Mr. Hubbell?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Did you know Mack McLarty?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Now, let me direct your attention, Mr. Coleman, to the period of time beginning in 1993. When did you first get retained by David Hale to represent him in connection with an investigation in Arkansas?

Mr. COLEMAN. August 10 or 11, 1993.

Mr. CHERTOFF. What was your assignment, or what was your engagement for Mr. Hale at that time?

Mr. COLEMAN. Mr. Hale appeared at my door one day and expressed a need for counsel in a pending criminal investigation, and I agreed to represent him in that matter.

Mr. CHERTOFF. After you agreed to represent Mr. Hale, did you go to the U.S. Attorney's Office and have a meeting?

Mr. COLEMAN. I did.

Mr. CHERTOFF. Who did you meet with?

Mr. COLEMAN. I met with Fletcher Jackson.

Mr. CHERTOFF. Can you tell us briefly what the discussion was about during that first meeting?

Mr. COLEMAN. Briefly, it was to try to determine what was happening since I didn't know at that time. I'd had very little opportunity to visit with my client to educate myself at that point in time. I had been told that there was an almost immediate indict-

ment pending for Mr. Hale. We just went over to discuss timetables and that sort of thing.

Mr. CHERTOFF. During that meeting, did he comment to you at all about the nature of the case or what you were getting yourself into?

Mr. COLEMAN. During that meeting, he outlined briefly for me what he thought his initial case against Mr. Hale was. At one point during that meeting, toward the end of it, he made some comment to me about I didn't know what I was fixing to get into; and at that point, nor did I.

Mr. CHERTOFF. After you had that meeting with Mr. Jackson, did there come a time shortly afterwards that you had another meeting with Mr. Jackson about the case?

Mr. COLEMAN. A day or two later I did, yes.

Mr. CHERTOFF. Did you comment to him at that point about what you were getting yourself into?

Mr. COLEMAN. I had a little better appreciation of the circumstances by that point in time, and I responded to his comments that maybe I didn't appreciate what I was getting into.

Mr. CHERTOFF. But you appreciate it now?

Mr. COLEMAN. Well, unfortunately I do now, yes, sir.

Mr. CHERTOFF. Now, Mr. Coleman, keeping yourself focused on this second conversation with Mr. Jackson, tell us about the discussions you had with him at that point, and in particular, what discussions you had about the possibility of working out a resolution of the case.

Mr. COLEMAN. The general setting and the factor that concerned me the most right at that immediate point in time was the rapidity with which matters were developing. I believe there had been a search warrant executed on Mr. Hale's office July 21, 1993. When I first became involved with the case, I believe a prior counsel, who had informally assisted Mr. Hale, had been told that Mr. Hale was going to be indicted sometime around August 23 of that year.

So Mr. Jackson and I had a discussion about the timing of any indictment as it would relate to my ability to educate myself as to what was going on in the case, and as to any opportunities that there might be, whatever those were—they were not really known at that point in time—to make some disposition of the case other than a felony indictment of Mr. Hale; or if there were to be an indictment, the timing of that indictment so that there could be an opportunity to try to get into some form of negotiation to see whether or not there would be an opportunity to come to some negotiated resolution on Mr. Hale's case.

Mr. CHERTOFF. In the course of this conversation with Fletcher Jackson, did you put on the table or describe in any way the kinds of cooperation and information that Mr. Hale might be able to furnish?

Mr. COLEMAN. We discussed those things, Mr. Chertoff. I would not put them in terms of offers or anything of that sort. We just had—I had known Fletcher for a number of years. I felt like he and I could have a fairly good discussion about those sorts of things, so we just kind of ran through some alternatives that might exist.

Mr. CHERTOFF. Did you discuss with him areas of interest that Mr. Hale might have some information about?

Mr. COLEMAN. I did.

Mr. CHERTOFF. Can you generally describe for us what those were as you said them to Mr. Jackson?

Mr. COLEMAN. By this point in time, I'd had an opportunity to look at the return of the search warrant that was executed on Mr. Hale's office, and an inventory of the records that had been seized in that search. I discussed matters with my client, and gave Fletcher at that point kind of an outline of persons and/or transactions that Mr. Hale might be able to offer some cooperation on.

Mr. CHERTOFF. Let me just go through some of the names that I think you mentioned in your deposition and see whether you can just affirm for us that these were some of the issues or some of the transactions you identified as potential areas of cooperation: Madison Guaranty Savings & Loan, James McDougal, Susan McDougal, Master Marketing, Governor Clinton, Jim Guy Tucker, Campobello Realty, Castle Water & Sewer, South Loop, and Madison Guaranty. Would those be some of the names you mentioned?

Mr. COLEMAN. Those were some of the names that I related to him, that these are areas, there were some others, but those were some of the areas.

Mr. CHERTOFF. What was Mr. Jackson's response to that?

Mr. COLEMAN. Fletcher basically said to me he was not going to enter into any sort of a plea negotiation or anything of that sort with me.

Mr. CHERTOFF. Did he explain why?

Mr. COLEMAN. Well, he said that it was not his call to make, it was not his decision to make. He was not going to do it. In a, oh, half-joking manner, he said something to the effect, he didn't have long to retirement and he just wasn't going to get into it.

Mr. CHERTOFF. During the same period, the second half of August 1993, did you make contact with Bill Kennedy at the White House?

Mr. COLEMAN. Yes, sir, I did.

Mr. CHERTOFF. What was your understanding of his position at that time?

Mr. COLEMAN. I understood, he was in the White House Counsel's Office.

Mr. CHERTOFF. Am I right that you actually had a personal acquaintanceship with a number of people in the White House in 1993?

Mr. COLEMAN. I knew a number of folks that were over there.

Mr. CHERTOFF. Why did you pick Mr. Kennedy to call?

Mr. COLEMAN. Because I knew or thought he was a lawyer in the Counsel's Office, and I wanted to talk to somebody that had a representational capacity.

Mr. CHERTOFF. When you say "representational capacity," you mean representing who?

Mr. COLEMAN. Mr. Clinton.

Mr. CHERTOFF. When you called Mr. Kennedy, can you just describe for us what you had to discuss with him? What did he say to you?

Mr. COLEMAN. What I discussed with him?

Mr. CHERTOFF. Yes.

Mr. COLEMAN. Oh, we exchanged a couple of pleasantries, I think, on the front end. I told him basically there was a Federal investigation taking shape down in Arkansas that might pose problems for our mutual clients.

Mr. CHERTOFF. When you made reference to his client, did he say anything in particular about that?

Mr. COLEMAN. Not at that point in the conversation. I had asked him when we started the conversation, if he, indeed, was working in the Counsel's Office. He said, yes. I said, then you have a client; and he said, I do. I said, well, I have a client and we have clients who are developing a problem down here in the Federal investigation in Little Rock, Arkansas.

Mr. CHERTOFF. Did you describe for him, during this conversation, what the problem was and what it was about?

Mr. COLEMAN. Well, he asked me, he said, I need some names if I'm going to react to anything. I said, well, you remember a guy named David Hale, and he said, yeah. I told him just basically that Mr. Hale's office over at Capital Management had been the subject of a search and seizure and a lot of his records had been confiscated by the Federal authorities, and that was generally what had transpired to that point in time.

Mr. CHERTOFF. What did he do, what did he say?

Mr. COLEMAN. At that point he didn't really say much. He asked me if I could give him any other names or anything of that sort. I basically outlined some. I can't tell you I did all of them, but I outlined some of the names that I gave you earlier.

Mr. CHERTOFF. And——

Mr. COLEMAN. I take that back. I don't think we got into that in that conversation. I think we got into that in a second conversation. In this conversation, I think it was fairly brief, and I think about all he did is, he said, what do you want me to do, and I said, I don't want you to do anything. I'm just trying to figure out where everybody is on this matter, and he said he would visit with his clients and get back to me.

Mr. CHERTOFF. Now, did he get back to you?

Mr. COLEMAN. Yes, sir, he did.

Mr. CHERTOFF. By telephone?

Mr. COLEMAN. Yes.

Mr. CHERTOFF. Can you tell us about how long it was after the call that you placed to him?

Mr. COLEMAN. A couple of days.

Mr. CHERTOFF. What did he say to you?

Mr. COLEMAN. At that point in time he asked me if I could give him, within the context of any attorney-client privilege, could I give him any more particulars on what was involved. I told him I could tell him some names and transactions. I gave him part of that list that you read off there a moment ago.

He asked me what Mr. Hale's posture was in terms of this negotiation, and I related to him that it was somewhat unknown. He asked me if Mr. Hale was trying to negotiate anything. I told him there would probably, were or would be some attempts in that regard. He asked me would Hale allege there was any "face-to-face meetings." I told him yes.

Mr. CHERTOFF. When you say "face-to-face meetings," what did he mean, what did you understand him to mean by "face-to-face meetings"?

Mr. COLEMAN. I understood him to mean Mr. Clinton.

Mr. CHERTOFF. What did you tell him about "face-to-face meetings" between David Hale and Mr. Clinton?

Mr. COLEMAN. Didn't tell him anything about them.

Mr. CHERTOFF. Did he press you for information about it?

Mr. COLEMAN. I don't recall him really pressing me, no.

Mr. CHERTOFF. Now, in this conversation, did there come a point where you took note of the fact that he described himself as having clients, plural, rather than client, singular?

Mr. COLEMAN. Well, he did that in the first conversation we had.

Mr. CHERTOFF. Explain how that came about.

Mr. COLEMAN. I had told him that I was coming up here to Washington to meet with SBA at some time in that following week, and if he wanted to meet with me or discuss anything further, I would be happy to do it with him. He said something to the effect of, he would have to meet with his clients and get back to me.

Mr. CHERTOFF. You took note of the fact that he used the term "clients," plural?

Mr. COLEMAN. I did because—basically I forget exactly how it came up in the course of the conversation, but we were talking in terms of a client, and at the end of the conversation he said "clients" and it kind of struck me.

Mr. CHERTOFF. Back to this second conversation, in the course of the conversation, did Mr. Kennedy ask you any questions about whether Madison Guaranty was involved in this investigation that touched on David Hale?

Mr. COLEMAN. I do not recall Mr. Kennedy asking me any questions on specifics like that. The conversation didn't last too long.

Mr. CHERTOFF. I am going to try to see if I can refresh your memory a little bit. We have Mr. Kennedy's notes, and according to the notes that were taken down actually by another lawyer who was sitting with him during the conversation, he asked you—and this is in quotes—"You mean Madison may have parked bad loans with David?" Doesn't that ring a bell? Do you remember him asking you about that?

Mr. COLEMAN. I remember we had a discussion along the lines of David and Capital Management had put out a lot of loans to a lot of politically prominent folks there in Arkansas, and I can't disagree with that.

Mr. CHERTOFF. Do you remember using a reference to Ms. Heidi Fleiss?

Mr. COLEMAN. Yes, sir, I do.

Mr. CHERTOFF. What was that?

Mr. COLEMAN. It was about the time Heidi had hit the papers as madam to the stars, and I said if she was madam to the stars, David Hale was the lender to the political elite in Arkansas.

Mr. CHERTOFF. Now, can you remember how long this conversation with Mr. Kennedy lasted?

Mr. COLEMAN. It was fairly short, 5 minutes, 10 minutes. It did not run any longer than that.

Mr. CHERTOFF. How did you leave it with him?

Mr. COLEMAN. I didn't really leave it with him. He left it with me. He said I'll get back to you or maybe I won't.

Mr. CHERTOFF. Did he get back to you after that?

Mr. COLEMAN. Never had another conversation with Bill after that.

Mr. CHERTOFF. Mr. Coleman, what was the reason you reached out for Mr. Kennedy in the first place?

Mr. COLEMAN. Well, there were a couple. First, when you get into kind of a multiparty complex-looking situation like this looked like it was going to become at that point in time, I generally try to make touch with those folks that I know to be represented and kind of see where everybody is, what their attitudes are, what if anything they know that they can impart to you or unknowingly they may impart to you.

Second, it was, rightly or wrongly, my client's suspicion, I guess for lack of a better word, that there were some folks in the Executive Branch that wouldn't be, oh, looking out for his best interests, I guess that is the best way to say it, at that point in time. And I thought that if I just made a provocative phone call, who knows what might transpire. Those folks over there had shown a propensity to make an ill-advised phone call or two in times past, in their Travel Office situation, and I could just hope maybe it might happen again.

Mr. CHERTOFF. When did Paula Casey assume office in the U.S. Attorney's Office in Little Rock, do you remember? Was it in mid-August?

Mr. COLEMAN. Yes, sir, it was in mid-August. I think it was sometime around August 16 or 17 of that year because I had another case that her predecessor, an Acting U.S. Attorney there, had signed an indictment or information that I was appearing at a plea and arrangement the morning she was sworn in. We had to pull that piece of paper down and have it re-executed by her. So I think it was the 16th or 17th.

Mr. CHERTOFF. After you had spoken to Fletcher Jackson, and he told you that he wasn't going to discuss a plea negotiation with him, had you made an effort to go above him, to the Acting U.S. Attorney at the time?

Mr. COLEMAN. Mr. Richard Pence was the Acting U.S. Attorney at that point in time, and I think I made a brief phone call to Richard one day after that and Richard didn't want to get involved in it. He anticipated somebody else would be coming on board.

Mr. CHERTOFF. Did there come a time when you finally had a "face-to-face meeting" with Paula Casey about this case?

Mr. COLEMAN. Yes.

Mr. CHERTOFF. When was that?

Mr. COLEMAN. That was the Tuesday after Labor Day in 1993. I think it was the 7th of September.

Mr. CHERTOFF. Who did you meet with?

Mr. COLEMAN. I met with Paula Casey and Michael Johnson.

Mr. CHERTOFF. That was the First Assistant, Mr. Johnson?

Mr. COLEMAN. I could not tell you what he was at that point in time. I think I read or heard something, he had been elevated to something like that, her Chief Assistant.

Mr. CHERTOFF. Now, was Mr. Jackson in this meeting?

Mr. COLEMAN. No, sir, he wasn't.

Mr. CHERTOFF. I have to ask you, were you injured or had you been injured——

Mr. COLEMAN. Yes, sir, I had.

Mr. CHERTOFF. Would you tell us what the discussion was during this meeting right after Labor Day?

Mr. COLEMAN. Basically I went to her with somewhat the same discussion factors that I had had with Fletcher, in that Mr. Hale seemed to be on a significantly fast-track road to an indictment. I didn't understand that since it appeared to be a relatively new investigation.

We had some discussion about the timing of any indictment against Mr. Hale. Could that not be deferred under some scenario or circumstances to allow us additional time to attempt to reach some negotiated arrangement on the disposition of his case.

We discussed, in some limited areas I had done with Mr. Jackson, those areas in which Mr. Hale might be able to offer assistance and the type of assistance that he could offer.

Mr. CHERTOFF. This is very important. In this meeting with Ms. Casey, you outlined to her some of the areas, transactions, and names that Mr. Hale might be able to offer assistance in?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Did you mention Mr. Tucker?

Mr. COLEMAN. Yes, sir, I think so.

Mr. CHERTOFF. Did you mention Mr. Clinton?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Did you mention Madison?

Mr. COLEMAN. I think I did.

Mr. CHERTOFF. What was her response?

Mr. COLEMAN. It was that she was new and didn't really know what was happening at that point. She would get with her—I think, first I had ever heard, they had a committee over there to go into these negotiated sessions, but, on case dispositions—but that she would get with her folks over there and get back to me.

Mr. CHERTOFF. Now, did you have later telephone conversations with Paula Casey about this?

Mr. COLEMAN. Mr. Chertoff, I had off and on, I think I had another conversation or two with either her or Mr. Johnson about it.

Mr. CHERTOFF. What was the bottom line, where did she come out with you in terms of her position on this?

Mr. COLEMAN. The bottom line, as I understood what the U.S. Attorney's position was at that point in time, was that we were not going to get anywhere on trying to negotiate anything with Mr. Hale unless he first came over and entered a plea to some unspecified felony, he would be sentenced, that he give his story, and depending upon what they thought of his story, they may or may not make a Rule 35 motion for a reduction of his sentence.

Mr. CHERTOFF. When you say "Rule 35 motion," for lay people, that's a motion that the Government makes after sentencing?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. In its discretion to recommend a downward movement of the sentence?

Mr. COLEMAN. That's correct.

Mr. CHERTOFF. What was your reaction to that, did you find that appealing?

Mr. COLEMAN. No, sir.

Mr. CHERTOFF. Why not?

Mr. COLEMAN. I thought it left too much unknown in the bargain for the benefit of Mr. Hale.

Mr. CHERTOFF. In your previous discussions with the U.S. Attorney's Office involving other cases, was this the same way they proceeded in other cases, that they basically say come in, have them plead guilty and then we will do a Rule 35, or was it more usual to have the discussion back and forth beforehand about what might be offered and what might be given?

Mr. COLEMAN. Well, sir, it had been my experience in these white collar type cases that involved banking or other business type situations, it took on more of an atmosphere of a civil lawsuit negotiation that, you know, here is an area that I can perhaps help you in.

The response on the other hand is well, if you can do that, we might be willing to do this, and it's a gradual process of coming together at some point in the middle. That middle point, if you made any kind of an arrangement, usually involved some considerations up front as to whether the defendant would get a 5(k) recommendation or something of that sort.

Generally it had been my experience that you had more known factors as to what the ultimate disposition of your client's case was going to be on the front end than I was getting in this one.

Mr. CHERTOFF. Again for lay people, when you say a 5(k) motion, am I correct that at that time the law provided that, in the course of a plea negotiation, under the sentencing guidelines, the Government could agree up front that under certain circumstances it would make a motion to lower the sentence before the court?

Mr. COLEMAN. Yes, sir, and that was generally a very, very vital circumstance from the standpoint of any criminal defendant because, as I understand the sentencing guidelines, the only human being on the face of the earth that could make a 5(k) motion is the U.S. Attorney, to depart from the sentencing guidelines and to allow the trial judge a downward departure from what the sentencing grid would otherwise specify.

Mr. CHERTOFF. Mr. Coleman, on September 15, you wrote a letter to Ms. Casey in which you indicated that you had been attempting to reach a form of a negotiated plea, "It's been difficult to find a place to surrender. I cannot help but sense the reluctance in the U.S. Attorney's Office to enter into plea negotiations in this case." You indicated Mr. Hale was prepared to provide substantial assistance and you suggested that Ms. Casey and her office take itself out, recuse itself in a sense, and let someone else handle the case.

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. When you wrote that letter, were you aware that Ms. Casey's husband was working as part of Governor Tucker's administration, and in fact, had been appointed under Governor Clinton's administration?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Was that part of what entered into your writing the letter?

Mr. COLEMAN. Part of it.

Mr. CHERTOFF. I know I'm coming to the end of my time but just a couple more questions—can you tell us what was the reason you suggested at this point, about a month into this effort to try to get a negotiation started, that Ms. Casey ought to recuse herself?

Mr. COLEMAN. A couple of factors. I thought it would be better for her and I thought it would be better for my client. I knew Paula had been active in the political arena over the years. I knew her husband had. I think, at least it was my impression, that all of us were fairly aware at that point in time that there were some substantially prominent folks involved here.

You could look at the receipt on the search warrant and the nature of the records that the FBI seized from Mr. Hale's office and certainly gather at least that Mr. Tucker's name was prominently displayed.

So from that standpoint, I thought it would probably be a wise thing to do. Selfishly, I thought it would be of benefit to my client because my client had some information to offer, and I wanted that offered in an environment where I thought it would be given the highest regard. And if there was a benefit of a doubt as to what my client was saying, that it would be more highly regarded if there was somebody else evaluating it.

Mr. CHERTOFF. All right——

Mr. COLEMAN. Just out of personal relationships, you know, if there was somebody that didn't know David Hale and didn't know Mr. Tucker, or any of the other players involved in this, I just felt like it would be more beneficial for Mr. Hale.

Mr. CHERTOFF. Let me just see if I can, again, try to make sure I understand the answer to that. Am I right that, in terms of this kind of a plea negotiation, if you are going to get the benefit of this ultimately before a judge, one of the important things that a judge has to consider is whether the information that was provided by the person who has entered into the plea has been of value to a Government investigation?

Mr. COLEMAN. That is of paramount importance, yes, sir.

Mr. CHERTOFF. And therefore from the standpoint of someone who enters into a cooperating plea, it's important that the authorities actually want to pursue and make use of the information because ultimately the value of that information benefits not only the Government but benefits the person at the time they stand before the sentencing judge.

Mr. COLEMAN. Well, Mr. Chertoff, I've seen over the years lukewarm 5(k) motions and I've seen enthusiastically endorsed 5(k) motions; and on behalf of Mr. Hale, I was looking for an enthusiastically endorsed 5(k) motion.

Mr. CHERTOFF. Let me close with this question, and obviously we know it's a matter of record that Mr. Hale eventually did enter into a cooperating plea agreement, I guess, with Mr. Fiske. But when Ms. Casey responded, did she indicate to you anything in response to your suggestion she recuse herself?

Mr. COLEMAN. Oh, I can't be sure of the timeframe. I think I gave you all some letters. She never directly responded that I recall. There was a response in one of her letters a few days later,

a week or two later, that she felt like her Office could handle anything that came before it.

Mr. CHERTOFF. Did she ever tell you the Department of Justice had suggested that she recuse herself?

Mr. COLEMAN. No, sir.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Coleman.

Mr. COLEMAN. Good morning, Mr. Ben-Veniste. How are you today, sir?

Mr. BEN-VENISTE. I'm doing fine, thank you, sir.

At the time that Mr. Hale retained your services, what was the name of your law practice?

Mr. COLEMAN. Skokos—well, let me think. In 1993, I think it was Skokos & Coleman.

Mr. BEN-VENISTE. Were there any other partners in the firm, or was it just the two named partners?

Mr. COLEMAN. I don't think, at that point in time, Mr. Rainwater had been a partner. I think Mr. Rainwater departed at the end of 1992, I believe. We had some other members but there were no other partners.

Mr. BEN-VENISTE. As of the time that you were retained by Mr. Hale, he was a Sitting Judge in Little Rock, Arkansas; is that correct?

Mr. COLEMAN. He was the Sitting Judge in the Pulaski County Municipal Court.

Mr. BEN-VENISTE. What does that court deal with besides——

Mr. COLEMAN. Its Municipal Court of Inferior Jurisdiction, heard misdemeanors, felony pleas, traffic offense cases.

Mr. BEN-VENISTE. When you first approached Mr. Fletcher Jackson, you didn't have too much information about what this case was all about, but that was your starting point to see what you could learn from Mr. Jackson; correct?

Mr. COLEMAN. I had practically no information on this case the first time I——

Mr. BEN-VENISTE. I'm sorry. Could you speak into the mike.

Mr. COLEMAN. I had practically no information on this case the first time I went to see Mr. Jackson.

Senator SARBANES. Mr. Coleman, you can pull that microphone closer to you.

Mr. COLEMAN. Let me get these papers out of my way here and I'll get it. Thank you.

Mr. BEN-VENISTE. So Mr. Jackson in substance said, well, you better go back to your client and really find out what's involved here, and you did that?

Mr. COLEMAN. Fair statement.

Mr. BEN-VENISTE. Mr. Hale's involvement in Capital Management Services has been described by one of the senior officials of the Small Business Administration as one of the most egregious instances of fraud that he has ever seen in his 17-year career with

the SBA. Were you made aware of Mr. Foren's testimony here this week?

Mr. COLEMAN. No, sir.

Mr. BEN-VENISTE. Well, that was in substance his testimony. Did you learn from Mr. Hale, in discussing with him what Mr. Jackson had suggested you do to learn about this case, that indeed he had operated Capital Management Services in an extraordinarily fraudulent manner?

Mr. COLEMAN. I would not categorize it that way, Mr. Ben-Veniste. My purpose was to determine at that point in time with Mr. Hale whether or not there were defensible issues in what was proposed to be presented against him.

Mr. BEN-VENISTE. With the benefit of hindsight, do you have reason now to believe that Mr. Hale was not truthful with you?

Mr. COLEMAN. Do I?

Mr. BEN-VENISTE. Yes.

Mr. COLEMAN. No.

Mr. BEN-VENISTE. Then he laid out for you the fraudulent activities that he had been involved with, and you determined that your best course was try to negotiate a plea of guilty, or get immunity if you could?

Mr. COLEMAN. Well, during our conversations, Mr. Hale laid out certain circumstances before me, and, Mr. Ben-Veniste, in my exercise of my professional responsibility, I made a determination that maybe everything would not be defensible.

Mr. BEN-VENISTE. Fair enough. On the one hand, we have the SBA Administrator saying that this is the most egregious case of fraud that the SBA has seen in 17 years, and you made the analysis that maybe this wasn't a defensible case for you to try. I'll accept that.

Let's go forward. You had by this time learned, had you not, that Mr. Hale had been provided with the fact that a criminal referral had issued forth from the Small Business Administration that previous May; correct?

Mr. COLEMAN. I did not know that until later in the game. I just knew that, at that point in time, there was an ongoing investigation. The source I didn't know.

Mr. BEN-VENISTE. The testimony was that Mr. Hale was advised on May 5, 1993, that the SBA was going to be making a criminal referral on him. So if you didn't learn that in your first meeting with Mr. Hale, he presumably told you that at some point, that he had known as of early May 1993, that he was under criminal investigation?

Mr. COLEMAN. I do not know that I became aware of that from Mr. Hale.

Mr. BEN-VENISTE. You learned it from some source?

Mr. COLEMAN. I learned it from some source.

Senator SARBANES. When did you undertake to represent Mr. David Hale?

Mr. COLEMAN. I couldn't hear you, sir.

Senator SARBANES. When did you undertake to represent Mr. David Hale?

Mr. COLEMAN. I think it was August 11, 1993.

Mr. BEN-VENISTE. Some 3 weeks or so had gone by from the time of the execution of the search warrant by the FBI against Mr. Hale's offices until the time that you were actually retained?

Mr. COLEMAN. Your math's approximately correct.

Mr. BEN-VENISTE. That's less usual than unusual for me. So 3 weeks later you came into the picture. Now, Little Rock is a close-knit community, people talk, and I take it it was no big secret, by the time you were retained, that the FBI had carried out a search warrant and Mr. Hale's records had been removed from him?

Mr. COLEMAN. Sir, I had no idea. I was not sitting there contemplating Mr. Hale's case prior to the day he walked in my door.

Mr. BEN-VENISTE. But as of the time you were retained, you tried to find out as much information about what had gone on before in order for you to plot your course about what you would do to best represent Mr. Hale; correct?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. You as a professional had the responsibility to try to make the best possible deal for Mr. Hale?

Mr. COLEMAN. I was asked by the man to guide him through the jungle of the criminal justice system as best I could, and that's what I set out to do.

Mr. BEN-VENISTE. So you took out your machete and you hacked your way over to Fletcher's office, you found out what you found out from him. You went back to Mr. Hale. He filled you in, you decided OK, let's see what I can negotiate.

Now, if I understand your negotiating posture as you have laid it out to this Committee in your depositions before, you had three objectives. First was to try to minimize or eliminate the possibility of Mr. Hale ever going to jail. Second was you were interested in determining if you could not get a complete pass, that is immunity, whether you could get a misdemeanor for Mr. Hale. And I think you had a third objective, what was that?

Mr. COLEMAN. Well, Mr. Hale was at that time a Sitting Judge. He was a licensed practicing attorney. He was married and had a family. My objective was to try to preserve as much of his professional and personal life as I could.

Mr. BEN-VENISTE. You stated to us that you thought you might try to preserve his ability to continue sitting as a judge in these negotiations; correct?

Mr. COLEMAN. Sure.

Mr. BEN-VENISTE. So on the one hand, you have the man who has been described as perpetrating the greatest fraud on the SBA in all time, and your objective was to go out and see if you could continue to have him sit as a judge. That was a pretty big bite to chew on, wasn't it?

Mr. COLEMAN. Those type of value judgments aren't in my realm of concern.

Mr. BEN-VENISTE. I think I asked you——

Mr. COLEMAN. I don't make those kinds of judgmental decisions, Mr. Ben-Veniste.

Mr. BEN-VENISTE. In New York they have a term for that; it's called chutzpah. Do you have a similar term in Little Rock?

The CHAIRMAN. Mr. Ben-Veniste, I have sat back and let you get into this. If you want to discredit anything that any of the wit-

nesses have done by way of inquiry, make inquiry. But when you make statements that an attorney in the representation of his client, who has not done anything that I have heard of, should draw that response and have his actions characterized as chutzpah, that is not inquiring.

Two, you know yourself as a fine lawyer that you have an obligation to take action within the canons of ethics to preserve your clients' rights and to do the best that you can for them. Now, when you began—and I am going to caution you on this because I am not going to permit it. This business of saying that you took out your machete and hacked your way over to Fletcher Jackson's, the U.S. Attorney's Office, that's out of line.

So now, let's continue the examination and move forward. We have a lot of witnesses today, and if we have to stay until midnight, we will. But let's be professional.

Continue.

Mr. BEN-VENISTE. Well, Mr. Chairman——

The CHAIRMAN. I will not permit that kind of characterization. It is wrong. It has no place here.

Mr. BEN-VENISTE. I wasn't arguing, Mr. Chairman, but what I was about to say was I didn't mean any disrespect by the use of the term "chutzpah." I think that's a perfectly recognized term. It's fine to set your sights high and in fact there's been a whole book written, I think, titled "chutzpah."

Mr. COLEMAN. I just tried to be as aggressive as I thought I could possibly be, sir.

Mr. BEN-VENISTE. We'll explore that. You should know that this Committee through its Chairman this week has indicated that Mr. Hale is a very important witness to us and that we are going to explore his allegations and his conduct most definitively, as we can in this Committee.

Let me ask you, of the three things that you set out to do, one was to get immunity. Now did you receive any response from Fletcher Jackson with respect to the proposal that your client be granted immunity in return for some future promise of cooperation?

Mr. COLEMAN. I do not know that Mr. Jackson and I ever got to the point of making proposals.

Mr. BEN-VENISTE. Did you suggest to him that your client would be interested in getting immunity?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. What did he say to you?

Mr. COLEMAN. Basically that he wasn't going to involve himself in the process of negotiations in this particular case.

Mr. BEN-VENISTE. He told you that it was his view that your client's conduct was felony conduct, did he not?

Mr. COLEMAN. He may have said that.

Mr. BEN-VENISTE. OK. Now, after he said——

Mr. COLEMAN. But I don't equate that necessarily. There are lots of felony conduct cases that get immunity. I can't, I don't always correlate those two.

Mr. BEN-VENISTE. Well, the next thing you proposed was misdemeanor; correct? You proposed that if Mr. Jackson would prom-

ise a misdemeanor count that you would provide information that would be interesting and useful to him?

Mr. COLEMAN. I don't know that Mr. Jackson and I ever got to the point of proposal/counterproposal. It was discussed, yes, sir.

Mr. BEN-VENISTE. According to Mr. Jackson's testimony, at page 41 of his deposition before this Committee, he most specifically recollected that you proposed the possibility of a misdemeanor in return for some future promise of cooperation.

Mr. COLEMAN. It was certainly discussed.

Mr. BEN-VENISTE. Did Mr. Fletcher Jackson not tell you that he did not believe there was an available misdemeanor for Mr. Hale?

Mr. COLEMAN. I don't recall Mr. Jackson telling me that.

Mr. BEN-VENISTE. According to his testimony—let's see whether this would refresh your recollection.

Mr. COLEMAN. If you would let me read along with you, I would be delighted. You have the advantage of me. I don't have Mr. Jackson's testimony.

Senator SARBANES. No, that's a reasonable point and we'll get a copy of the deposition down to you.

Mr. COLEMAN. You're pointing me to page 37, sir?

Mr. BEN-VENISTE. No, page 41. Actually the last line on 40. Are you with me? "Question: Did you subsequently have another meeting with Mr. Hale or Mr. Hale's lawyers." This is the deposition of Fletcher Jackson, October 19, 1995. You with me?

Mr. COLEMAN. I'm looking at page 41 which says he had a meeting with me the next day.

Mr. BEN-VENISTE. Let me read it to you.

Mr. COLEMAN. I'm looking at Mr. Jackson's deposition here, and he says we had——

Mr. BEN-VENISTE. At line 20.

Mr. COLEMAN. He said we had——

The CHAIRMAN. Wait, wait, wait. This is what I propose. If you want the witness to look at a particular area, direct him to that area, as you are attempting to do, I believe with some specificity, and then go over that particular area.

Mr. BEN-VENISTE. Thank you.

The CHAIRMAN. Now, if the witness, in addition to that thinks there should be given a more complete response, I am going to permit——

Mr. COLEMAN. I'm sorry. I apologize.

The CHAIRMAN. I am going to permit him to do that also. You start, you frame the question and pick the area.

Mr. BEN-VENISTE. At the bottom of page 40——

The CHAIRMAN. Let's see if we can see it.

Mr. BEN-VENISTE. "Did you enter into any plea negotiations at that time"—this is Mr. Jackson talking about his conversations with you, Mr. Coleman.

The CHAIRMAN. The question is raised to Mr. Jackson; is that what we're saying?

Mr. BEN-VENISTE. Yes.

Question: Did you enter into any plea negotiations at that time?
Answer: No.

Mr. COLEMAN. You are where, now? We are on page 41? Where are you now?

Mr. BEN-VENISTE. Page 40.
The CHAIRMAN. Let's identify the line because this is difficult.
Mr. BEN-VENISTE. Line 18.
The CHAIRMAN. Let's see if he gets there first, now.
Mr. COLEMAN. OK.
The CHAIRMAN. Mr. Coleman.
Mr. COLEMAN. Got it.
The CHAIRMAN. Now, let's start it.
Mr. BEN-VENISTE. I'll go again. Line 18.

Question: Did you enter into any plea negotiations at that time?
Answer: No.
Question: Did you subsequently have another meeting with Mr. Hale or Mr. Hale's lawyers?
Answer: The next time it was Randy Coleman that came by, either that day or the next day after.
Question: Still in early August?
Answer: Yes.
Question: And?
Answer: Basically the conversation at that time was the availability of a misdemeanor. Also discussed at that time was where Hale could lead to, which would be Jim McDougal, and after that, possibly Tucker, and possibly to the Clintons. I told him there was no applicable misdemeanor in financial crimes. You have to have $100 or less to get out of the misdemeanor category by any statute. And that in my view, under the circumstances, that would have to be a felony. He left and from there on out, about a week later, Ms. Casey came in and all the negotiations from then on were with Mr. Coleman, Mr. Johnson, and Ms. Casey. I wasn't involved in those discussions.

Now, how long had Fletcher Jackson been in the U.S. Attorney's Office? You mentioned he had some years to go until his retirement. Do you know how many years he had been there?
Mr. COLEMAN. Twenty-some-odd.
Mr. BEN-VENISTE. So he was a career person in the Little Rock U.S. Attorney's Office; correct? That was a well-known fact.
Mr. COLEMAN. He was a career person, yes, sir. Now, are we going to talk about this anymore or are we going to go on to something else?
Mr. BEN-VENISTE. Yes, we are. As I said, does that refresh your recollection that you discussed a misdemeanor?
Mr. COLEMAN. I have never said we did not discuss a misdemeanor. The import of your characterization of his testimony was that A, I made a proposal to him, which I told you I did not make a proposal to him. I don't see in here where he says I made a proposal. I told you we discussed it. It seems like what he is saying is that we discussed it.
He says he told me there was no applicable misdemeanor in financial crimes, I do not recall him telling me that. If he did, and he very well may have, but just because he said it, does not make it so.
Mr. BEN-VENISTE. Among your three objectives that you stated was to try to get a misdemeanor if you couldn't get immunity. You didn't get immunity, and you are suggesting to us now that it was Mr. Jackson who raised the issue of misdemeanor and not you?
Mr. COLEMAN. No, sir. No, sir.
Mr. BEN-VENISTE. You think you might have raised the issue?
Mr. COLEMAN. I'm sure I did.
Mr. BEN-VENISTE. Thank you. Now, let me ask you this.

Mr. COLEMAN. But I will say this too. We went through this same exercise in Mr. Hale's case with some of his co-defendants. I recall the conversations being that there were no misdemeanors available. And unless I am wrong, during the course of the trial some of Mr. Hale's co-defendants, Mr. Fiske and his bunch and Mr. Matthews' lawyer and Mr. Fitzhugh's lawyer, they all went to the books during the course of the trial and they found a misdemeanor that those other two boys could plead to.

Now I don't know, Mr. Ben-Veniste, I ain't the smartest guy in the world, but if you want to find one generally you can find one.

Mr. BEN-VENISTE. Mr. Hale's co-defendants pleaded to misdemeanors, you said?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. That was during their trial and that was before Mr. Hale was called upon to give testimony, wasn't it?

Mr. COLEMAN. I don't know whether it was before he was called upon to give testimony or not.

Mr. BEN-VENISTE. Well, do you think that Mr. Hale may have testified under oath somewhere in some trial?

Mr. COLEMAN. In a trial?

Mr. BEN-VENISTE. Yes, a trial as in they were on trial, they entered a plea of misdemeanor.

Mr. COLEMAN. Are you relating it to this case or any trial?

Mr. BEN-VENISTE. No, to this case.

Mr. COLEMAN. To this case, I'm not aware of any trial testimony of Mr. Hale.

Mr. BEN-VENISTE. So prior to Mr. Hale being called upon to give testimony, a deal was cut whereby the people who were on trial for felonies were given misdemeanors?

Mr. COLEMAN. I can't accept your characterization of that.

Mr. BEN-VENISTE. All right. You tell me whether or not Mr. Hale testified in that trial, first of all.

Mr. COLEMAN. Mr. Hale did not testify in that trial.

Mr. BEN-VENISTE. Was Mr. Hale scheduled to testify against his co-defendants?

Mr. COLEMAN. As memory serves me, he was called to testify at some point or a subpoena was issued for him at some point.

Mr. BEN-VENISTE. Before that point actually arrived, the prosecution offered misdemeanor pleas to the individuals who were under indictment and were then standing trial, and Mr. Hale did not have to give his testimony; correct?

Mr. COLEMAN. I do not know the timing of the sequence.

Mr. BEN-VENISTE. I see. Were you still representing Mr. Hale at that point?

Mr. COLEMAN. You know I was.

Mr. BEN-VENISTE. Well, were you paying attention to the trial in which he might have been called as a witness?

Mr. COLEMAN. To some extent, but not totally. I had other fish to fry.

Mr. BEN-VENISTE. Now, in your quest for immunity in the first place for Mr. Hale, is it correct that you sought protection of Mr. Hale from prosecution for any crime that he might have committed up to that point?

Mr. COLEMAN. We did not ever get to the point of defining the scope of any immunity at that point in time.

Mr. BEN-VENISTE. Was it your objective, Mr. Coleman, to seek immunity from prosecution for Mr. Hale for any crime that he might have committed up until August 1993?

Mr. COLEMAN. I would have taken the very best I could have gotten.

Mr. BEN-VENISTE. Did you educate yourself with respect to all of the vulnerability that Mr. Hale had in terms of violations of law?

Mr. COLEMAN. Ultimately, yeah, I think so.

Mr. BEN-VENISTE. Did you factor into the equation, for example, whether Mr. Hale would be prosecuted for fraud in connection with his burial insurance business?

Mr. COLEMAN. At what point in time are you referring to?

Mr. BEN-VENISTE. Did he tell you, in your early conversations with Mr. Hale when you were trying to get your arms around the scope of the problems he was facing, that he had defrauded individuals who had bought burial insurance from him in this company which I have the name of somewhere, maybe you know the name of it, do you know?

Mr. COLEMAN. Let me answer it this way: Number one, I am not going into the content of what my discussion with my client would have been on that point so you can ask me another question.

Mr. BEN-VENISTE. Let me ask you first of all if you remember the name of the insurance company?

Mr. COLEMAN. I think there was an insurance company, National Savings or National Life, something like that.

Mr. BEN-VENISTE. The National Savings Life Insurance Company. That was the company that took money from people by way of premiums so that when they died they would have a burial plot and the expense of their funeral covered; is that what burial insurance is?

Mr. COLEMAN. I have to take your word for it.

The CHAIRMAN. Mr. Ben-Veniste, you are pretty close to the line where you are going beyond now. Counselor, keep your questions to the relevant areas that are not protected from the lawyer-client privilege. I have heard attorney-client privilege here waived in very dubious situations. But it seems to me when you are beginning to ask a lawyer as it relates to conversations in areas that he has had with his client with respect to specific matters that may or may not be criminal that you are crossing the line.

Mr. BEN-VENISTE. I hope I am sticking to the point of what the objectives were in seeking immunity and we have had a lot of conversations about that.

The CHAIRMAN. I think we heard that and I think you have heard the counselor say that he was going to try to get as much protection for his client as possible and wanted to get as much to the scope as he possibly could. I mean, wouldn't you do that, wouldn't every lawyer attempt to do that?

Mr. BEN-VENISTE. I don't think that is the question, Mr. Chairman.

Mr. SARBANES. I think it is relevant, Mr. Chairman.

The CHAIRMAN. He has asked the question, go ahead but I am not going to permit you to continue to go over the same thing. If

you are going to ask again, did you try to get immunity for your client, he's going to tell you yes, and if you ask him the third time, he's probably going to give you the same answer, and if you ask him the 50th time, the answer isn't going to change.

It is very clear that he was trying to get the best deal he could for his client. Is that crass, is that horrible, is that terrible? That's his job. Now, go ahead.

Senator SARBANES. It is relevant, Mr. Chairman, to know how much Mr. Coleman knew of what Mr. Hale might have done with respect to the immunity he was trying to get. I am brought up very short to learn here today that Mr. Hale, according to Mr. Coleman, did not tell him about the criminal referral by the SBA which he was notified about on the 5th of May——

The CHAIRMAN. No, I don't think he said that. He said he does not recall him relaying that the first time that he met, but at some point in time he learned about that. I think that is basically the gist of it; is that right, Mr. Coleman?

Mr. COLEMAN. You have used the word "criminal referral," and that has a very specific meaning to me, and I don't know that I ever got that from Mr. Hale.

Mr. BEN-VENISTE. OK. Now, the only question I had asked you was whether you knew what the burial insurance was. Do you?

Mr. COLEMAN. Do I know what burial insurance is, generally.

Mr. BEN-VENISTE. Is that insurance that people pay premiums on to cover the cost of funeral expenses and burial plots?

Mr. COLEMAN. I suppose it is.

Mr. BEN-VENISTE. Now, are you suggesting that—let me ask you a question. You contacted a New York Times reporter by the name of Jeff Gerth, did you not?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. When did you contact Mr. Gerth?

Mr. COLEMAN. When?

Mr. BEN-VENISTE. Yes.

Mr. COLEMAN. Sometime in September.

Mr. BEN-VENISTE. The purpose of contacting Mr. Gerth was to have your client, Mr. Hale, talk with Mr. Gerth; correct?

Mr. COLEMAN. Ultimately, yes, sir.

Mr. BEN-VENISTE. You thought that it would be a good idea for Mr. Gerth to get this exclusive because you thought that this would give some ammunition to your side in terms of proping up Mr. Hale's credibility; isn't that so?

Mr. COLEMAN. It was done in an effort to preserve Mr. Hale's credibility.

Mr. BEN-VENISTE. How long did Mr. Gerth spend with Mr. Hale in September 1993?

Mr. COLEMAN. A couple of days.

Mr. BEN-VENISTE. Were you there for the whole time?

Mr. COLEMAN. Most of it.

Mr. BEN-VENISTE. Was some of it you were and some of it you weren't?

Mr. COLEMAN. I think I was there for the majority of it.

Mr. BEN-VENISTE. The whole 2 days?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. When you say the majority of it, does that mean that you were absent for some period of time?

Mr. COLEMAN. May have been.

Mr. BEN-VENISTE. OK. What were the ground rules that were established?

Mr. COLEMAN. Initially it was to be treated as an off-the-record; that condition was subsequently removed.

Mr. BEN-VENISTE. How long did it take to remove that?

Mr. COLEMAN. A few days.

Mr. BEN-VENISTE. Were there any other ground rules?

Mr. COLEMAN. None that I recall.

Mr. BEN-VENISTE. Was there any limitation on the questions that Mr. Gerth could propound to Mr. Hale?

Mr. COLEMAN. There were some areas that were not inquired into.

Mr. BEN-VENISTE. What were the limitations that were put on Mr. Gerth in terms of what questions he could not ask?

Mr. COLEMAN. As I'm sitting here before you today, I can't recall. I know there were some.

Mr. BEN-VENISTE. Were there any limitations on what Mr. Gerth could do with the information in terms of disclosure?

Mr. COLEMAN. Ultimately, no.

Mr. BEN-VENISTE. Are you seriously suggesting here that there is an attorney-client privilege with respect to all of the things that Mr. Hale told Mr. Gerth in your presence?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. What might that privilege be?

Mr. COLEMAN. Attorney-client privilege.

Mr. BEN-VENISTE. Attorney-client plus reporter for the New York Times privilege?

Mr. COLEMAN. Mr. Ben-Veniste, as you well know, the privilege belongs to the client and not me.

Mr. BEN-VENISTE. Well——

Mr. COLEMAN. I don't make any claim of privilege. It's the client that makes the claim of privilege.

Mr. BEN-VENISTE. Well, are you suggesting, sir, that a privilege of attorney-client confidential communication survives a situation where the attorney and the client have called in a news reporter, spoken for 2 days with the news reporter, and then not restricted the news reporter in any aspect of what he might do with the information?

Mr. COLEMAN. Mr. Ben-Veniste, I have not undertaken a review of court decisions on that matter, and I wouldn't presume to give you a legal opinion on that point right this minute.

Mr. BEN-VENISTE. Has your client instructed you that you may not reveal any of the subject matters that he was prepared to talk to and did in fact talk to Mr. Gerth about?

Mr. COLEMAN. I am not authorized to waive any attorney-client privilege of Mr. Hale's at this point in time.

Mr. BEN-VENISTE. Could you just give me your understanding of the attorney-client privilege because sir, I have to tell you, that my understanding of the attorney-client privilege means that it protects confidential communications between an attorney and a client

which are not disclosed to any third party. Is that different than your understanding?

Mr. COLEMAN. My understanding of it is that it is meant to protect those communications that are intended to be confidential.

Mr. BEN-VENISTE. How could they be confidential if they are presented to the reporter for the New York Times?

Mr. COLEMAN. I don't know that I am prepared to tell you that right now.

Mr. BEN-VENISTE. Well, maybe you could take a moment since my red light is on and think about it.

The CHAIRMAN. Mr. Ben-Veniste, the red light has been on for quite a while.

Mr. COLEMAN. Mr. Ben-Veniste, it doesn't make any difference. It's between me and my client. I'm not authorized to get into it and I'm not going to do it. If you want to approach Mr. Hale on that point and challenge his ability to claim a privilege, you can do so.

The CHAIRMAN. All right, Mr. Ben-Veniste.

Mr. BEN-VENISTE. I will come back to that when my time is restored.

Mr. COLEMAN. As amusing as you find that.

Mr. BEN-VENISTE. It is amusing in one respect and sad in another, sir.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Coleman, just a couple questions to kind of finish up for me. You said a moment ago that the reason you or your client spoke to Mr. Gerth was in an effort to preserve his credibility. What did you mean by that?

Mr. COLEMAN. So that if and when a time ever arose that Mr. Hale made some sort of negotiated arrangement with anyone to dispose of his case that hopefully what he said after would be what he said beforehand so that there would be some thread of consistency there.

Mr. CHERTOFF. Did you have a concern at some point that perhaps that what Mr. Hale was offering to cooperate again, with respect to wasn't going to get listened to and that it was necessary to make some kind of a record of it?

Mr. COLEMAN. Well, look, I'm representing Mr. Hale.

You represent any client, client gives you certain goals and objectives that they want you to accomplish. And one of those objectives that was given to me by my client was that he felt that his information might be more highly regarded by somebody who was independent than the folks who were in the Little Rock and Washington, DC office of the Justice Department at that point in time, and I acted accordingly.

Mr. CHERTOFF. Finally, Mr. Coleman, let me just focus back on something that's come up a little bit, the whole issue of the idea of your trying to negotiate the best deal possible for your client. I know Mr. Ben-Veniste characterized your client's crime as being of a certain magnitude, and certainly we all know from looking at the record, that there are people who commit serious crimes who get immunity partly because, of course, they don't give immunity to people who have committed a crime, by definition it immunizes them. Sometimes people who commit multiple murders wind up

getting plea bargains in order to testify and they do so quite successfully, as a lot of defendants find out.

I want to make sure we are clear on this point. When you were representing David Hale he was your only client; correct, in this matter?

Mr. COLEMAN. In this matter, yes.

Mr. CHERTOFF. You were not a Government attorney, you were not working in some Government office on the public payroll, you were the lawyer for David Hale and your entire responsibility as an attorney was to David Hale as your client, within the bounds of the ethical restrictions that govern private attorneys; correct?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. It was in accordance with that obligation that you acted in attempting to reach out for as many people as you could to try to get someone to enter into negotiations with you on behalf of Mr. Hale; is that correct?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Ultimately, it was with Mr. Fiske, the Special Counsel, that a resolution of this was reached by you on behalf of your client?

Mr. COLEMAN. Yes.

Mr. CHERTOFF. I have no more questions, Mr. Chairman.

The CHAIRMAN. We have no more questions at this time, and so we would turn to Senator Sarbanes.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Now, let's go through the chronology of what occurred. When Fletcher Jackson and then Mr. Johnson and Paula Casey became involved in the equation, after Mr. Fletcher Jackson had had his conversations with you, they told you that it would be necessary for your client to plead to a felony count; correct?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. They told you, did they not, that they were willing to receive any information that your client had implicating others through a proffer, did they not?

Mr. COLEMAN. Seemed like there were some letters or some notes, that you've been provided, that set out what they were or were not willing to do, Mr. Ben-Veniste, and it probably is stated better there than I could state it now.

Mr. BEN-VENISTE. Isn't it correct in substance, sir, that they told you they were prepared to receive any information that your client might be willing to provide by way of a proffer of information?

Mr. COLEMAN. The way it was always put to me, as I recall it, if Mr. Hale would come over, plead guilty to a felony, make his proffer, after he was sentenced, if they thought enough of it, they would give him a Rule 35 motion to reduce his sentence.

Mr. BEN-VENISTE. Didn't Ms. Casey offer you the opportunity for a 5(k) letter——

Mr. COLEMAN. No.

Mr. BEN-VENISTE. —in connection with a plea to a felony?

Mr. COLEMAN. I don't recall that ever coming up.

Mr. BEN-VENISTE. We'll provide you with the documents.

Mr. COLEMAN. If you have it, let's talk about it, but I don't remember it.

Mr. BEN-VENISTE. Did you ever make an unqualified offer to provide information?

Mr. COLEMAN. No, sir.

Mr. BEN-VENISTE. In fact, every time you talked about providing information, there were strings attached to it; correct?

Mr. COLEMAN. I was attempting to enter into a negotiated disposition of Mr. Hale's case which contained conditions.

Mr. BEN-VENISTE. You objected, at some point, to the fact that Ms. Casey was involved in the discussions because she had been appointed by President Clinton; correct?

Mr. COLEMAN. Well, I would assume that, she was the U.S. Attorney for the Eastern District of Arkansas, she'd be involved in it.

Mr. BEN-VENISTE. Before she took over that position, your discussions were with this career prosecutor, Fletcher Jackson; is that correct?

Mr. COLEMAN. My discussions were with Mr. Jackson.

Mr. BEN-VENISTE. It has been raised, Mr. Coleman, that as an experienced lawyer, you knew that if you wanted to go to the Department of Justice career professionals with your information in Washington, DC, that option was open to you; correct?

Mr. COLEMAN. I think I answered that question in my deposition, that I was not totally ignorant of that avenue.

Mr. BEN-VENISTE. By not being totally ignorant, you mean to say that you were well aware that if you wanted to, you could go to the Department of Justice to the career professionals in the criminal division and provide the information or talk about any negotiation that you wanted to enter into, but you consciously determined that you would not do that; correct?

Mr. COLEMAN. I cannot tell you that I was aware of the full scope of what might or might not be available to me through career officers at the Department of Justice here in Washington. I was aware that I could have probably gone to them, but I did not do so.

Mr. BEN-VENISTE. The U.S. Attorney and the Assistant U.S. Attorneys that you dealt with said make a proffer, you're going to have to enter a felony plea, you'll get consideration on the basis of the quality of the information. You rejected that in some sense.

Mr. COLEMAN. No, sir, I did not reject that. I rejected come over here, make a plea, go to sentence, make a proffer, and then we will tell you what we are going to do for you.

Mr. BEN-VENISTE. OK. Then at some point to move this along.

Mr. COLEMAN. That's an important distinction there. I know you don't want to make it, but that's an important distinction.

Mr. BEN-VENISTE. Let's move this along then.

The CHAIRMAN. Yes.

Mr. BEN-VENISTE. After Ms. Casey recused from the case, a career Department of Justice lawyer was appointed to take on the responsibility, among other things, of Mr. Hale and Capital Management. Do you recall his name?

Mr. COLEMAN. Donald Mackay. I do not know what the scope of his authority was. He presented himself in Little Rock, Arkansas in the company of Ms. Casey one afternoon in my office, and announced he was there to handle Mr. Hale's case.

Mr. BEN-VENISTE. Now, Mr. Mackay said look, if you object to this idea of having to plea to a felony, why don't I just keep an

open mind on that issue, make me a proffer, I will evaluate it, and then I will determine whether a felony is warranted or not; isn't that so?

Mr. COLEMAN. I do not agree with your assessment of his communication to me. He wrote me a letter that would be the best evidence of what he said to me on that, and I do not agree that he said that.

The CHAIRMAN. Do we have that letter?

Mr. BEN-VENISTE. Yes.

The CHAIRMAN. Let's make sure that the witness has a copy of the letter and let's go over it.

Mr. BEN-VENISTE. December 15——

The CHAIRMAN. Can we have staff get a copy?

Mr. BEN-VENISTE. Do you have that in your packet there?

Mr. COLEMAN. Let me look and see. Now, which one are you referring to?

Mr. BEN-VENISTE. December 15, Donald Mackay.

Mr. CHERTOFF. I think you mean January 3, actually.

Mr. BEN-VENISTE. You see the December 15 letter?

Mr. COLEMAN. I see a December 15 letter addressed to me from Mr. Mackay.

Mr. BEN-VENISTE. And you see it was followed by a January 3 letter, following up?

Mr. COLEMAN. In the packet that's been given to me, January 3 follows December 15.

Mr. BEN-VENISTE. OK. Do you want to read that into the record?

Mr. COLEMAN. Do I?

Mr. BEN-VENISTE. Well, you won't characterize it.

Mr. COLEMAN. I'll read it here. If you have something you want to ask me about in specific I would be glad to——

Mr. BEN-VENISTE. I'll take the time to read it with the Chairman's permission.

The CHAIRMAN. Fine.

Mr. BEN-VENISTE. It reads:

Dear Mr. Coleman, from our conversations I understand that your client, David L. Hale, is interested in knowing what the Fraud Section would require as terms and conditions of a proffer agreement between Mr. Hale and the Fraud Section. The Fraud Section would require, before it were to accept a proffer from Mr. Hale, that he agree in writing to the following terms and conditions:

(1) Mr. Hale agrees to be interviewed by the Fraud Section and/or its designees. The scope of the interview will be unlimited.

(2) No statements made by you or your client or other information supplied by you or your client during the interview will be used against your client in any criminal proceeding except as provided here in after in paragraphs 3, 4, and 6 in this agreement.

(3) Statements made to and other information supplied to the Fraud Section or its designees must be truthful and complete. If Mr. Hale intentionally supplies or causes to be supplied false or misleading statements or false information to the Fraud Section or its designees, Mr. Hale may be prosecuted under any appropriate criminal statute, and all statements and all other information supplied by Mr. Hale during the proffer may be used against him without limitation.

(4) The Fraud Section and/or its designees may make derivative use of any statements made by or other information provided by you and/or Mr. Hale including the development and pursuit of investigative leads and acquisition of evidence. Thus, except as provided in paragraph 3, the Fraud Section may not directly offer into evidence your client's statements against him. However, the Government may use against your client any and all evidence it develops from your client's statements without limitation.

This provision is necessary in order to eliminate the necessity for a court hearing at which the United States would have to prove that the evidence it would introduce at trial or any related legal proceedings is not tainted by any statements made by or other information provided by you or your client during the proffer.

(5) Mr. Hale understands and agrees that he is not entitled to any consideration regarding any existing or potential charges against him solely because he makes a proffer. The Fraud Section will evaluate the proffer and will unilaterally determine its value and whether Mr. Hale should receive any consideration.

(6) In the event Mr. Hale is a witness at any trial or other legal proceeding and offers testimony significantly different from any statements made or information provided during the proffer, said statements and information may be used in cross-examining or impeaching Mr. Hale or as rebuttal evidence. This provision is necessary in order to assure that your client does not abuse the opportunity for a proffer, and to the best of his ability, provides complete and truthful information, statements, and other information.

If Mr. Hale would like to enter into a proffer agreement as described in this letter, please tell me no later than January 5 and I will give you an appropriate agreement for you and Mr. Hale to execute.

Now is it correct, that in paragraph 5 of that letter Mr. Mackay is specifically saying that he is holding open the Department of Justice's question of whether he needs to plea to a felony? They will evaluate the proffer and then make a determination as to what consideration is appropriate?

Mr. COLEMAN. His letter says what it says.

Mr. BEN-VENISTE. Now, you rejected that offer. You did not accept it.

Mr. COLEMAN. Mr. Ben-Veniste, we were in a process of negotiation, and as that letter was written and the terms and conditions that were set out, we did not.

Mr. BEN-VENISTE. OK.

Mr. COLEMAN. My client did not.

Mr. BEN-VENISTE. So now let's move it along further. An Independent Counsel is appointed, Mr. Fiske; correct?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. Is it not the case that prior to Mr. Fiske's appointment, no proffer was made by Mr. Hale to any Government agency?

Mr. COLEMAN. That is correct.

Mr. BEN-VENISTE. Yet, by this point, how many different reporters had interviewed Mr. Hale?

Mr. COLEMAN. Don't know.

Mr. BEN-VENISTE. Well, you knew about Jeff Gerth from the New York Times. How many do you know about that you participated in or arranged?

Mr. COLEMAN. Four or five.

Mr. BEN-VENISTE. So four or five reporters received Mr. Hale's proffer of information and yet nobody at the Department of Justice. Now let's go to Mr. Mackay.

Mr. COLEMAN. Is there a question there?

Mr. BEN-VENISTE. Yes, Mr. Mackay, the ultimate plea to which Mr. Hale entered a plea——

The CHAIRMAN. Mr. Ben-Veniste, I'm going to let you finish this but again you are over the time and I would like you to get to the point. Go ahead, finish.

Mr. BEN-VENISTE. That's fine.

With respect to what Mr. Hale pleaded to, is it correct, sir, that he pleaded to not one but two felony counts?

Mr. COLEMAN. Correct.

Mr. BEN-VENISTE. So that's double what Ms. Casey was asking for; correct? One from Ms. Casey, two——

Mr. COLEMAN. Well, if you want to view it from that standpoint alone, I'm going to commend you again on your math.

Mr. BEN-VENISTE. Thank you. Did Mr. Hale make a proffer in connection with that plea agreement?

The CHAIRMAN. We're going well beyond the scope.

Senator SARBANES. We'll do another round.

Mr. BEN-VENISTE. No, we're not.

The CHAIRMAN. Yes, we are.

Mr. BEN-VENISTE. The scope.

Mr. CHERTOFF. I believe we had an understanding going into this, we were going to take questions of him regarding his discussions through Mackay, not his discussions with Fiske.

Mr. BEN-VENISTE. Well, this is in the public record, Mr. Chertoff.

The CHAIRMAN. We're not going to get into what he did with Special Counsel.

Mr. CHERTOFF. Whether there was a proffer I don't think is in the public record. I'm going to be very brief again, Mr. Coleman.

The CHAIRMAN. Otherwise we can even get Special Counsel up here if you want to examine him. That's going beyond.

Mr. CHERTOFF. I just want to go over the last sequence here and make sure we're clear on what happened. Again this is a pretty basic kind of first grade criminal law negotiation here, the back and forth between the Government and the defense attorney, and you were the defense attorney here.

Now, my understanding is that the letter of January 3 which Mr. Mackay wrote to you essentially was a suggestion that Mr. Hale come in, give a statement, have no indication of what the Government would be prepared to do if they were satisfied with the statement; is that correct?

Mr. COLEMAN. I don't see it in the packet that Mr. Ben-Veniste's folks have provided to me. It may be here. I'm thumbing through and don't see it. But I sent a letter back to Mr. Mackay responding to his January 3 letter, and I set out what our considerations were in response to that letter at that point in time in an effort to move things along.

Mr. CHERTOFF. I was coming to that, Mr. Coleman, because that is right. Mr. Ben-Veniste had skipped the fact that, after this January 3 letter, you in fact met with Mr. Mackay the following day; correct?

Mr. COLEMAN. I met with Mr. Mackay on several occasions and I can't remember if I met with him specifically that next day, but I met with him on several occasions.

Mr. CHERTOFF. We're going to get you a copy of your January 13 letter. We'll put this in. I'll read this in to get completeness. On January 13 you wrote back in response to Mr. Mackay's letter, and you said,

> Dear Donald, I hope you are enjoying your new celebrity status. However, you need to contact your press agent. Some of the news media are pronouncing your name 'Mackey.' This needs to be corrected immediately.

And I hasten, Mr. Coleman, to ask you, let's make sure no one misreads this. This is kidding around; right?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. So no one is going to suggest there is anything more serious than that. You go on to say:

More seriously, this is in response to your letter of January 3, 1994, and our meeting of January 4, 1994. We remain interested in negotiating some type of arrangement if possible. However, we still have problems with the arrangements as proposed. You refer to this circumstance as 'taking the wrapper off the package,' and inspecting the goods and then unilaterally deciding if you wish to buy the package and at what price. That is fair from your viewpoint. However, from David's viewpoint I could describe the proposed procedure differently. As H.R. "Bob" Haldeman once said, "It is hard to get the toothpaste back in the tube once it's out."

Parenthetically, Mr. Coleman, I have heard Mr. Ben-Veniste use that expression, and until I read the letter, I never knew where he got it from.

David is totally at his peril and the Government's mercy. Once he has shucked his wrapper, he is without any protection at all. You could receive his information and decline any deal. The Government would then be able to seek to prosecute him for any perceived offense revealed in proffered statements. Further, all options are unilaterally open to the Government. There is no prior commitment from the Government should you find the package acceptable. At a minimum, it seems that David should not suffer any greater exposure by offering his information and that there should be some parameters previously determined should you decide to buy his package. To include these provisions would seem more than in the nature of a negotiation.

David has another problem of who he is actually negotiating with and in whose hands he is ultimately placing his fate. These comments are absolutely no adverse reflection on you personally. By all accounts of your representation, you are regarded as a highly talented attorney and prosecutor adhering to a high professional ethical standard. However, as I mentioned to you the other day, David sincerely believes that there are others who ultimately control the Justice Department who would alter the course of nature as far as his case is concerned. Therefore, he would want to know precisely the individuals besides yourself who would make decisions on this matter. He wants reasonable assurances that Mr. Jerald Stern and others are not to be involved. This is a fair request in view of the history of this case.

Most of this letter was dictated prior to yesterday's announcement of the Special Prosecutors by the House and the Attorney General. Since David's case and other Madison-related matters were previously transferred to you when Ms. Casey was recused on November 9, 1993, it is presumed that all cases will now likewise be transferred to the Special Prosecutor. Even in view of this event the foregoing comments are applicable. Since yesterday's announcement, we suggest it inappropriate that any further action be taken on David's case until the Special Prosecutor has assumed control of this case, especially superseding indictment previously announced for January 18, 1994. Please consider this matter and discuss further.

Was that the last communications you had with Mr. Mackay?

Mr. COLEMAN. I think Mr. Mackay and I may have had one other personal conversation after this, basically just a follow-up to the last paragraph of my letter. Basically, Mr. Mackay and I had a conversation in which he told me it was probably our decision to negotiate with the devil we knew or the devil we didn't know.

Mr. CHERTOFF. Now, Mr. Coleman, let me just ask you two other quick questions. During the period of time that you were dealing with Ms. Casey, did you raise with any of the prosecutors the possibility of doing what is sometimes called an attorney proffer?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. And an attorney proffer is one in which the witness himself or herself does not actually talk to the prosecutor, but the attorney essentially gives a summary of at least some of what the cooperating witness might be prepared to say; is that correct?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Is that a manner of getting the ball rolling on negotiation that you had used or you knew of having been used in other cases?

Mr. COLEMAN. I had used it before under circumstances that were agreed to where that wouldn't create any additional exposure for your client and the other side could take a preview, and they could tell you I'm interested in going further or I have no interest, so I've used it and seen it done before.

Mr. CHERTOFF. You offered Ms. Casey and her assistants—you invited them to ask you for an attorney proffer?

Mr. COLEMAN. Yes, sir.

Mr. CHERTOFF. Now let me ask you, again, finally, I mean, there is evidence which we're going to develop in the record later that, in a meeting in late September, Ms. Casey had been advised that she was to recuse herself by others in the Department of Justice, and in fact, there is evidence that at a point in time she told other people that she intended at some point in the future to recuse herself. Did she ever communicate to you in September that she had been—it had been suggested to her she ought to take herself out of the case, or that she intended to?

Mr. COLEMAN. No, sir. The first conversation I had with her on that subject or knew anything about it was the afternoon of November, whatever it was, 8th or 9th, that she—our offices were in the same building.

She called me and said she wanted to bring Mr. Mackay over to meet me, and she and Mr. Mackay came over to my office. At that point in time, she told me she was out of the case and he was in.

Mr. CHERTOFF. Finally, Mr. Coleman, I have a document which you furnished to us, and this, I guess, goes back to Mr. Ben-Veniste's comment about the magnitude of the fraud involved with respect to Capital Management. I don't think that I have a copy. I'm not sure I do. Let's put it up on the Elmo, though. Maybe we do have a copy. It doesn't have a Bates number. Can you just tell us what this is?

Mr. COLEMAN. I don't know. I can't see it.

Mr. CHERTOFF. We're going to get it to you. It's part of the production that I think Mr. Coleman made.

Mr. COLEMAN. Did this come out of mine?

Mr. CHERTOFF. Did it come out of yours?

Mr. BEN-VENISTE. I don't think so but if we are going to get into this——

The CHAIRMAN. Wait. I'll set the ground rules.

Mr. CHERTOFF. If it did not come out of your production—I thought it had. It's part of a check register.

Mr. COLEMAN. I don't recall——

Mr. CHERTOFF. All right, in that case——

Mr. COLEMAN. We could look at what I sent up here and see, I don't recall that.

Mr. CHERTOFF. If you don't recall it, that's fine. All right. Never mind. Thank you.

The CHAIRMAN. Any other questions?

Mr. CHERTOFF. Nothing from me, Mr. Chairman.

Senator SARBANES. Mr. Coleman, as I understand it, you did not want to plead to a felony in these discussions, is that correct, early on?

Mr. COLEMAN. Never wanted to plead to one.

Senator SARBANES. That was to protect Hale's position as a municipal judge?

Mr. COLEMAN. That was to protect his position as a judge, to protect his law license, to protect his personal life and his family and all——

Senator SARBANES. The question, of course, arises how reasonable the positions you were taking were as you were dealing with the U.S. Attorney's Office, because you're suggesting that they were being unreasonable, and of course another possible view of this is that you were the unreasonable one in terms of the things you were seeking, given the nature of Mr. Hale's violations.

Now, in the end—and this is a document filed in open court—Mr. Hale and you signed an agreement accepting a guilty plea to a criminal information charging him with violations of title—this is with Mr. Fiske and his team—violations of Title 18 U.S. Code Section 371 and 2, Title 18 U.S. Code Sections 1341 and 2.

These charges each carry a maximum sentence of 5 years imprisonment, a maximum term of 3 years supervised release, a maximum fine of the greatest of $250,000, twice the gross gain or twice the gross loss and a mandatory $100 special assessment. The total maximum sentence of incarceration on both counts is 10 years imprisonment. And you sign—you and Mr. Hale entered into that agreement; is that right?

Mr. COLEMAN. We entered into an agreement, yes, sir.

I can't see—does it purport to be in on—this on the screen here?

Senator SARBANES. Yes.

Mr. COLEMAN. Well, it's got—the top paragraph of a letter addressed to me of March 19, 1994. I can't——

Senator SARBANES. I think it's in your packet. It's March 19, 1994.

The CHAIRMAN. Take your time to get it out.

Mr. COLEMAN. I have that. I signed it——

Senator SARBANES. On the signature page, "agreed and consented to." I take it that's David Hale's signature. And "approved." That's yours; correct?

Mr. COLEMAN. That's correct.

Senator SARBANES. So you entered into an agreement accepting a guilty plea on two felony counts; correct?

Mr. COLEMAN. Mr. Hale did. I planned to walk out.

Senator SARBANES. OK. I understand that. Mr. Hale did; correct?

Mr. COLEMAN. Yes, sir.

Senator SARBANES. All right. Now, this was a far stretch from the positions you were asserting earlier in dealing with the U.S. Attorney's Office.

Mr. COLEMAN. Well, it didn't wind up where I was asking, but a lot of times it's been my experience that negotiations never do.

Senator SARBANES. All right. That gives us some measure, I think, of the reasonableness of the positions. Let me ask you this question: When did you and Mr. Hale do the interview with the New York Times?

Mr. COLEMAN. Sometime in September.

Senator SARBANES. Do you know the date?

Mr. COLEMAN. No, sir.

Senator SARBANES. We think it was about the 16th of December. Does that sound correct to you?

Mr. COLEMAN. Approximately.

Senator SARBANES. Now, when the FBI took the documents from Mr. Hale's office in July, that was known by a number of people, wasn't it?

Mr. COLEMAN. I don't know who knew it. I didn't know it. The FBI knew it, Mr. Hale knew it. I don't know who else knew it.

Senator SARBANES. When was it done, do you know?

Mr. COLEMAN. The search warrant was executed, it is my memory, July 21.

Senator SARBANES. What time of day did they go into Hale's office and take out the records?

Mr. COLEMAN. I don't remember, sir. It seems like it was in the morning, but I don't recall.

Senator SARBANES. It was in the daytime, OK. Now, on September 20, you sent a letter to Michael Johnson, I think you have it there in your packet.

Mr. COLEMAN. It's in what's been handed to me?

Senator SARBANES. I think so.

Mr. COLEMAN. I sent a letter when?

Senator SARBANES. September 20.

Mr. COLEMAN. Yes, sir.

Senator SARBANES. In that letter you said——

Mr. COLEMAN. Wait. I sent a letter to him, OK, September 20.

Senator SARBANES. Do you have it?

Mr. COLEMAN. Yes, sir.

Senator SARBANES. "Dear Michael"—on September 20.

Mr. COLEMAN. Yes, sir.

Senator SARBANES. Now, in that letter, you say that you were seeking proper inducements to Mr. Hale.

Mr. COLEMAN. Yes, sir.

Senator SARBANES. One of the things you said Mr. Hale would be willing to do was to participate in undercover operations to develop additional information; is that correct?

Mr. COLEMAN. I state that I made it known that Mr. Hale was willing to participate in undercover operations to develop additional information regarding same, and I think that had been made back in August to Mr. Fletcher.

Senator SARBANES. You thought Mr. Hale could be an undercover operative?

Mr. COLEMAN. I think there was a distinct possibility that existed back early on.

Senator SARBANES. When the FBI previously had walked into his office in the middle of the day and taken out documents?

Mr. COLEMAN. Yes, sir.

Senator SARBANES. So how did you think he was going to pull that off?

Mr. COLEMAN. Because folks were still talking to Mr. Hale and contacting him on a daily basis without evidencing any knowledge

or concern that they were aware of any of his predicament at that point in time.

Senator SARBANES. Now, this letter was after you had the interview with the New York Times reporter?

Mr. COLEMAN. This letter was, yes. I presume it was. But my original offer had not been. I'm not that far out in left field, Senator, that I would suggest that.

Mr. BEN-VENISTE. But your offer was part of the package of misdemeanor or no prosecution at all?

Mr. COLEMAN. Well, you keep talking about it as an offer. With Mr. Jackson or Ms. Casey or her staff, up until late October, we never really engaged in what I would categorize as offers of plea negotiations. We had discussions, Mr. Ben-Veniste, and I don't know how long you all want to whip a dead horse here on this, but, you know, my whole process was to attempt to negotiate something for my client, and with Ms. Casey and her office it was not so much the terms as to what one might do, but to even get something started. Now, that was my perception. We weren't even getting started anywhere on it, and it didn't strike me as reasonable that given the situation that existed at that point in time, they would not even want to talk about it any further.

Senator SARBANES. They were clear in letters to you, Mr. Coleman, that they remain interested and willing to obtain any and all information your client has available. This is a letter dated September 21 from Paula Casey to you. Your starting position was so extreme and unreasonable that it doesn't seem to me to constitute any basis for negotiation.

In the end, with Mr. Fiske, you pleaded to two felony counts. Now, you are in here telling us—look, you said I couldn't get anything working, but you are casting doubts on the judgment of the U.S. Attorney's Office because they didn't respond to a position you were laying down, which, sitting here and looking through this material seems to me to be utterly unreasonable in terms of creating any realistic context in which a negotiation could take place.

Mr. COLEMAN. Well, realism is in the eye of the beholder, sir.

Senator SARBANES. That's true, that's true, no question.

Mr. COLEMAN. I have been doing this for a number of years, and as I told Mr. Ben-Veniste in my deposition, you have to start somewhere, and it's easier to come down than go up. It's a process.

Mr. BEN-VENISTE. Let me turn to the issue of the telephone call that you placed to Mr. Kennedy in Washington. You indicated you had two purposes for that. Mr. Chairman, I will stop right now or continue this line as you wish.

The CHAIRMAN. I am going to permit you to finish this line because you are entitled to examine this. You should do that, but we will not go over once again the negotiations and the process, et cetera. That has been explored fully and I think the record amply demonstrates that. So continue.

Mr. BEN-VENISTE. Now, you indicated you had two purposes in the call to Mr. Kennedy. One was whether Mr. Kennedy was aware of the situation, and you wanted to make him aware of the situation that your client was in, the circumstances he was in, in a general sense, facing criminal indictment in Little Rock; correct?

Mr. COLEMAN. Well, that came out in the conversation. I don't know that that was a goal or objective that I had in calling him. It was the content of one of the conversations.

Mr. BEN-VENISTE. And, indeed, you had been furnished with a draft copy of a proposed indictment against Mr. Hale, had you not, by Mr. Fletcher Jackson?

Mr. COLEMAN. At some point in time Fletcher gave me a draft of a proposed indictment that he was going to present against Mr. Hale. Originally August and then in September.

Mr. BEN-VENISTE. So he gave you a draft in August and another draft in September?

Mr. COLEMAN. I think he gave me a couple of drafts.

Mr. BEN-VENISTE. In your conversation with Mr. Kennedy, you had a second purpose, and that was to put some information in the pipeline and see whether the White House would do something foolish with it, having in mind what had been in the newspapers about the Travel Office; correct?

Mr. COLEMAN. Basically, yes, sir.

Mr. BEN-VENISTE. You were hoping that some improper contact would be made, or something foolish, as you put it?

Mr. COLEMAN. That speaks for itself, yes, sir.

Mr. BEN-VENISTE. Let me ask you something else, sir. Your law partner, Mr. Skokos, what was his relationship to Mr. Sheffield Nelson?

Mr. COLEMAN. I think they had been friends, I think Ted had been Mr. Nelson's campaign finance chairman.

Mr. BEN-VENISTE. When he ran against Governor Clinton?

Mr. COLEMAN. When he ran against Governor Clinton, when he ran again against Governor Tucker.

Mr. BEN-VENISTE. So——

Mr. COLEMAN. Mr. Skokos had been a sizable campaign fundraiser for Governor Tucker.

Mr. BEN-VENISTE. And in connection with the hoped-for faux pas or gaffe by the White House that you put into the line, that was the second of your objectives; you had no other objective; correct?

Mr. COLEMAN. Other than as I stated earlier, it was my habit to talk to people that I knew to be represented in a multiparty situation, and I think I contacted some other attorneys for some other people, I contacted Sam Heuer for Jim McDougal, I talked to Bobby McDaniel for Susan McDougal, tried to get hold of John Haley, whom I knew at that time represented Jim Guy Tucker.

Mr. BEN-VENISTE. Let me ask you this, sir, and I don't mean any disrespect nor do I draw any conclusions from this, but I put this out to you because it has been speculated upon, that a contact to the White House may have been a suggestion or a warning that if something bad happens to Mr. Hale, the White House ought to know that there were consequences for Mr. Clinton. From your testimony, I take it, sir, that you were not calling to secure some kind of favorable treatment by intercession by the White House.

Mr. COLEMAN. I had no expectation that that would occur. In fact, I thought it would be just the opposite.

Mr. BEN-VENISTE. In terms of what occurred in this matter, the fact that Mr. Hale was indeed indicted in a prompt way, as we have heard from the SBA officials who have come here to testify,

any notion of the White House being intimidated by any threats or suggesting that they would do something improper to favor Mr. Hale because of fears of what Mr. Hale might say was essentially erased, was it not, by the return of that indictment?

Mr. COLEMAN. Well, I never in my wildest imagination thought I would intimidate anybody at the White House. That didn't enter my mind. The fact that Mr. Hale was indicted fairly promptly and that other indictments were promised in a relatively short time did not change any of my original assessments of the fact that it was possible that there might be some folks that wish Mr. Hale to be a totally discredited felon before he could say anything to anybody.

Mr. BEN-VENISTE. Let me ask you about the misdemeanors that were provided to the two co-defendants of Mr. Hale during their trial on felony charges. Who made the determination that they were to be given misdemeanor charges?

The CHAIRMAN. Wait, wait, wait, I won't even let you answer that. This is not the proper person to ask about who made such a determination where there's a prosecution that takes place by the Independent Counsel. I think it is preposterous. If we want to move these hearings—and I am going to say it with respect to all of them—I am going to limit your questions now, they have to be relevant and certainly not repetitious. That does not mean that one cannot examine why a person said something a little earlier to get the full extent. I want to be fair, but that is absolutely out of line.

Now, if you have some other questions that are relevant, let's get to them.

Mr. BEN-VENISTE. All I was trying to—Mr. Chairman——

The CHAIRMAN. I'm not even going to ask the reason for it because it seems to me, Counselor, very obvious that this is not the person that you should be addressing that question to.

Mr. BEN-VENISTE. He represented Mr. Hale at the time, Mr. Chairman.

The CHAIRMAN. He had nothing to do with two other people who pled to misdemeanors. Now come on.

Mr. BEN-VENISTE. Well, it wasn't Ms. Casey, was it, who made that decision?

The CHAIRMAN. He doesn't know. When Ms. Casey comes, if you want to ask her, you can.

Senator SARBANES. No, I think this is—I must say at this point, Mr. Chairman, I think it's highly relevant as to whether it was Ms. Casey, because Mr. Coleman has cast a lot of aspersions here about Ms. Casey. Was it Ms. Casey?

Mr. COLEMAN. I haven't cast any aspersions. I have come in here to tell you a fact, and the fact is I tried to negotiate an arrangement. I got a chilly reception. I drew some perceived conclusions about that reception I received. You may draw differently, I don't know. I presume you would. I have not come in here to cast any aspersions on Paula Casey.

Senator SARBANES. The conclusions you drew cast aspersions, and the point I made earlier is eventually you signed a plea agreement for a two-felony count with the Independent Counsel——

Mr. COLEMAN. The record speaks for itself.

Senator SARBANES. —which I think clearly demonstrates that the position you were advancing early on in your dealings with the

U.S. Attorney's Office in Little Rock were unreasonable, they were beyond any reasonable framework to try to work out——

Mr. COLEMAN. Senator, it's not uncommon——

The CHAIRMAN. Wait, I am going to ask you to stop. Let me say this. As it relates to my colleagues, I have extended, and will continue to, the greatest latitude because I believe they should be permitted to say whatever they want to say, just about, because this is their venue and they are all equal. But I would ask my friend, please, that is at least the third time that we have gone over what Mr. Hale eventually pled to and what position, in the attempt to bargain, his counsel, Mr. Coleman, started with.

We understand that, and I understand well your feeling that if he pled guilty to two felonies, it was unreasonable to ask for a misdemeanor. It is in the record. Please, if we are going to move forward, we have a lot of work to do, let's not review it over and over.

Senator Sarbanes.

Mr. BEN-VENISTE. If I may, Mr. Chairman, with respect to——

The CHAIRMAN. I am going to set a time limit soon on relevant questions that you may ask this witness, and then if it goes beyond that, we are going to bring on the next panel.

Senator SARBANES. Mr. Chairman, I think we ought to get a chance to develop whatever relevant questions——

The CHAIRMAN. You have had a very long opportunity, and your time is up—indeed, just a lot of wasted time. Having said that, if we have relevant questions, let's get them out.

Mr. BEN-VENISTE. I would like you to comment on the testimony of Mr. Irvin Nathan, who is the Deputy to Philip Heymann.

The CHAIRMAN. Now look. Please, let's provide at least a format for asking questions. If you have testimony before you by a particular individual and you want the witness to comment on it, let's at least identify it, provide it to him, or if it's in his packet, point him to it and then let's start the procedure. This has broken down.

Senator SARBANES. Mr. Chairman, we will withhold the question until Mr. Coleman has a copy of the deposition.

The CHAIRMAN. And that's only reasonable. When counsel says I would like you to comment on the testimony of somebody and he has not seen it, does not know where it is, it is not before him, that is unfair. You are too skilled a lawyer to do this. If you are doing it intentionally to see how far you can move the Chair, well, you are going to find out. We are reaching the outer limits of what I will provide an opportunity for you to do. Now, let's provide him with the information and address the question properly.

Mr. BEN-VENISTE. It will take us a moment, Mr. Chairman, to find it, provide it to him. Why don't we put it on the Elmo, we can all read it together. We have only one copy.

The CHAIRMAN. OK. We'll take the time——

Senator SARBANES. We'll make a copy of it and come back to it.

Mr. COLEMAN. Could I take a short break?

The CHAIRMAN. We'll take a 5-minute recess.

[Recess.]

The CHAIRMAN. Mr. Ben-Veniste, you were going to pursue a line. I think the witness has been provided with the documents that you want to speak to him about, so why don't you proceed.

Senator SARBANES. Mr. Coleman, you have that Nathan deposition in front of you.

Mr. COLEMAN. Sir, I have a one-page——

Senator SARBANES. Page 105.

Mr. COLEMAN. Yes, sir, and 6, 7, 8, and 9.

Senator SARBANES. Mr. Nathan said in his deposition:

I thought that what the U.S. Attorney's Office was doing, as I understood it, was quite appropriate, that there was no sense in buying a pig in a poke——

Mr. COLEMAN. Where are we? I don't know where we are here.

Senator SARBANES. We are on page 105, deposition of Irvin B. Nathan, Deputy to Phil Heymann, Deputy Attorney General.

Mr. COLEMAN. I don't know the man, don't know who he is, or what he does.

Senator SARBANES. I am just putting that in the record and informing you in the process. He said, and I now am quoting from the deposition right there beginning on page 105:

I thought that what the U.S. Attorney's Office was doing, as I understood it, was quite appropriate, that there was no sense in buying a pig in a poke, that if you wanted to make a proffer up front, they could then deal with it. And in any event, as I understood the facts, the SBA allegations against Judge Hale were unrelated to this proffer and the U.S. Attorney's Office believed it had a very strong case against Judge Hale on that issue, and I thought they were well within their rights to be insisting on a felony plea to that matter.

Now, if you turn to the deposition of George Carver, Jr., which I think you have there.

Mr. COLEMAN. Well, I have one sheet that has pages 128, 129, 130, 131.

Senator SARBANES. That's right. If you go over to the beginning of the second column, where Carver says beginning on line 7:

Step one in the process is Hale proffers and he proffers with us leaving us free to use the fruits but not necessarily the admissions, and that's pretty fundamental in dealing with someone who is trying to negotiate a disposition less than what you mean, go into court or think you can go into court and prove. So to the extent they were insisting on a comprehensive proffer from Hale, that was exactly the right thing to do.

Are the conclusions you drew about the conduct of the U.S. Attorney affected at all by the two judgments of these career people?

Mr. COLEMAN. This doesn't mean anything to me, sir.

Senator SARBANES. All right, thank you.

Mr. BEN-VENISTE. We are going to have Webster Hubbell testify next here. There are records that reflect that during the summer of 1993, you had certain telephone conversations reflected by the telephone records with Webster Hubbell. You knew Mr. Hubbell?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. Would you tell us, please, whether any of the conversations that you had with Mr. Hubbell dealt in any way, shape or form with Mr. Hale or your representation of Mr. Hale or the matters about which you've testified here today?

Mr. COLEMAN. Had nothing to do with Mr. Hale or any of this. It was on a totally separate, unrelated matter.

Mr. BEN-VENISTE. What were you calling Mr. Hubbell about?

Mr. COLEMAN. That other matter.

Mr. BEN-VENISTE. Can you be more specific?

Mr. COLEMAN. Well, I had another case that was being prosecuted out of—I think I've used the term Big Justice up here in Washington, and I had called Mr. Hubbell on that matter.

Mr. BEN-VENISTE. For what purpose?

Mr. COLEMAN. The purpose was there was another attorney up here handling the matter, there were a group of lawyers and investigation targets in Little Rock that couldn't get along with this fella, and I was sort of elected by default to call Webb Hubbell and ask him if there was somebody else that could take a look at the case up here. I don't think I am the only one that called him out of that group, though. I think there were some others that called him also.

Mr. BEN-VENISTE. On how many occasions did you place calls to him?

Mr. COLEMAN. Sir, we had two conversations, and I can't tell you how many telephone calls because you folks up here are awful busy. It's hard to get hold of you.

Mr. BEN-VENISTE. So you played some telephone tag, leaving messages back and forth before you hooked up and had the two conversations that you recall having with Mr. Hubbell?

Mr. COLEMAN. Yes, sir.

Mr. BEN-VENISTE. Those conversations were on a subject completely apart from Mr. Hale?

Mr. COLEMAN. Had nothing to do with Mr. Hale whatsoever. It was another case that had commenced many months prior to my knowing David Hale had a problem.

Mr. BEN-VENISTE. Did Mr. Hubbell provide any assistance to you in connection with that case?

Mr. COLEMAN. None that I know of.

Mr. BEN-VENISTE. I have nothing further.

The CHAIRMAN. Mr. Coleman, thank you very much.

We'll call our next panel, Mr. Hubbell.

Mr. COLEMAN. Could I ask, do you all want this stuff back or do I take it with me?

The CHAIRMAN. If you want to keep it——

Mr. COLEMAN. Souvenir.

The CHAIRMAN. You can keep it as a souvenir.

Thank you, Mr. Coleman. Appreciate you coming in.

Mr. Hubbell, will you continue to stand for the purpose of taking the oath.

[Whereupon, Webster Hubbell was called as a witness and, having first been duly sworn, was examined and testified as follows:]

The CHAIRMAN. Thank you.

Mr. Hubbell, you have been here a number of times so I don't know if you do have an opening statement or comment but we are certainly pleased to take it if you do.

SWORN TESTIMONY OF WEBSTER HUBBELL
FORMER ASSOCIATE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

Mr. HUBBELL. Thank you, Mr. Chairman. I have no opening statement.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Hubbell, I want to direct your attention back to the period of time when the Rose Law Firm was hired by the RTC to handle a matter against an accounting firm by the name of Frost. Do you remember that?

Mr. HUBBELL. Yes, I do.

Mr. CHERTOFF. Were you managing partner of the firm at that time?

Mr. HUBBELL. I believe Mr. Kennedy had become managing partner in 1989. It may have been right during the transition but it was close.

Mr. CHERTOFF. You had been managing partner?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. The case came in to you?

Mr. HUBBELL. The case came in to Mr. Donovan and myself, yes.

Mr. CHERTOFF. What was Mr. Donovan's position in the firm?

Mr. HUBBELL. I believe at that time he was an associate in the litigation section. He might have just made partner but I don't believe so.

Mr. CHERTOFF. Who called you to offer you the case?

Mr. HUBBELL. I believe Ms. Breslaw. I'm not sure whether it was a call or Ms. Breslaw was there on another matter, Corning Bank case, and the subject came up.

Mr. CHERTOFF. They suggested that the RTC would retain your firm to handle the matter against Frost?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Had you heard of the Frost accounting firm at that time?

Mr. HUBBELL. Yes, we had.

Mr. CHERTOFF. How had you heard of them?

Mr. HUBBELL. They were a rather large firm in Little Rock, and our firm had had dealings with the Frost firm. I had friends who at one time worked in the Frost accounting firm, so I knew the firm, yes.

Mr. CHERTOFF. Did you accept the matter on the spot?

Mr. HUBBELL. No, we did not.

Mr. CHERTOFF. Did you decide you were going to think about accepting the matter?

Mr. HUBBELL. We had to do a conflicts check.

Mr. CHERTOFF. Now, a conflicts check is a check that is made within the law firm to determine whether there is an ethical conflict of interest that prohibits an attorney from taking on a matter; is that correct?

Mr. HUBBELL. Yes, and in addition, because it involved an accounting firm, we would have to—and a malpractice claim against an accounting firm, it involved issues other than conflicts as well, Mike.

Mr. CHERTOFF. At that time in your firm—this is in the late 1980's. I guess it's before you had a computer database that could search the files; right?

Mr. HUBBELL. We had a computer but I don't believe we had any kind of capabilities of doing any kind of computer conflicts check.

Mr. CHERTOFF. But what you would do is you would circulate around the firm in some form of a memo the proposed new matter

to determine whether anybody had represented anybody involved in the transaction; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Because you would then want to check further with any of the partners involved in the transaction to see if there was a conflict; is that correct?

Mr. HUBBELL. In this case, yes.

Mr. CHERTOFF. Now, you understood in this case, although you would be retained by the RTC, you were going to be retained really to be the successor to claims that Madison Guaranty Bank allegedly had against the Frost accounting firm; correct?

Mr. HUBBELL. My understanding—and it was the FDIC, I believe, Mike, at that time as opposed to the RTC——

Mr. CHERTOFF. Right, FDIC.

Mr. HUBBELL. —was that the case had already been filed and had been filed by the institution before the FDIC had become conservator, and it was pending in Pulaski County Circuit Court and that it was, to some extent, an inherited case, yes.

Mr. CHERTOFF. So you understood that the gist of the case, the transactions involved, would have to do with the manner in which the Frost accounting firm had handled its accounting and auditing work with respect to Madison Guaranty and its subsidiaries; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. You knew one of the subsidiaries of Madison Guaranty was a company called Madison Financial, which was in the business of acquiring property; correct?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. Quite naturally I assume one of the first things you wanted to do in performing your conflicts check was to determine whether, in fact, the firm had ever represented Frost; right?

Mr. HUBBELL. I'm sure that that was part of the work that we had done. We had already done, Mike, a conflicts check on the institution of Madison in the fall of 1988.

Mr. CHERTOFF. Why had you done that?

Mr. HUBBELL. We had been asked by the FDIC—whether our firm could handle the representation of the FDIC of Madison when they took over that institution along with other institutions.

Mr. CHERTOFF. So when you were approached in terms of handling the case against Frost, you had, in addition to your conflicts check with respect to that matter, an earlier conflicts check regarding your work for Madison; right?

Mr. HUBBELL. That is correct.

Mr. CHERTOFF. I assume that in the course of doing those conflicts checks, you circulated around the firm in the normal manner a request for anybody who had handled Madison matters to come forward and notify you about that; correct?

Mr. HUBBELL. OK. I know that in connection with the Frost litigation, we sent around a memo like that. I don't remember specifically, and I haven't had an opportunity to look at the firm's record, exactly how the partner in charge of the earlier inquiry had handled the conflicts check for Madison and the other institutions. We were—I think the term was called back then by the FDIC "bidding" on the business.

Mr. CHERTOFF. Who was the partner in charge of the earlier matter?

Mr. HUBBELL. Vincent Foster.

Mr. CHERTOFF. And this matter came in to you; right?

Mr. HUBBELL. Yes, Mr. Donovan and myself.

Mr. CHERTOFF. Were you going to be the partner in charge of this matter?

Mr. HUBBELL. That's what was proposed, yes.

Mr. CHERTOFF. Were you aware of the fact at the time you accepted this engagement—and I take it you eventually did accept the engagement; correct?

Mr. HUBBELL. Yes, we did.

Mr. CHERTOFF. You were aware of the fact that the firm had done work for Madison Guaranty or its subsidiaries; correct?

Mr. HUBBELL. Yes, I was.

Mr. CHERTOFF. Did you disclose that fact to Ms. Breslaw?

Mr. HUBBELL. I did.

Mr. CHERTOFF. You did?

Mr. HUBBELL. I did.

Mr. CHERTOFF. Did you tell Ms. Breslaw, for example, that the Rose Law Firm had represented the Madison Guaranty Savings in connection with the acquisition of some property in 1985 and 1986 known as the Arkansas Industrial Development Corporation property?

Mr. HUBBELL. No, I'm sure I did not in that specifics.

Mr. CHERTOFF. Did you notify Ms. Breslaw that, in fact, the law firm had represented the Madison Guaranty Savings in trying to obtain approval from Beverly Bassett-Schaffer in order to issue preferred stock to raise the capital levels in the bank?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. Did you indicate that in connection with this very same property, this Industrial Development Corporation property acquisition, that the Rose Law Firm had given regulatory advice to Madison Guaranty concerning certain regulations that governed water utilities and sewer utilities?

Mr. HUBBELL. No, I'm sure I did not.

Mr. CHERTOFF. What is it exactly you told Ms. Breslaw about the nature of your previous representation of Madison?

Mr. HUBBELL. As far as telling Ms. Breslaw, I believe the words were something to the effect that we didn't have any conflicts, we could take it on. There had been three matters that I had specifically addressed—and this may have been less than a 30-second conversation—the primary one being whether the firm would take on the litigation against Frost since we had other clients who were still being audited by Frost & Company.

Mr. CHERTOFF. So in this 30-second conversation, you said that the firm had taken on three matters for Madison——

Mr. HUBBELL. No, no, I didn't say that, Mike.

Mr. CHERTOFF. What did you say in the 30-second conversation?

Mr. HUBBELL. Mike, I'm trying to remember. What I'm trying to say, in a very short context, was that in my mind, there were three issues. One was my father-in-law, one was prior work for Madison and the primary one being the Frost issue itself. I knew that there had been a more complete disclosure concerning our representation

of Madison to the FDIC. I probably improperly assumed that she knew about that.

Mr. CHERTOFF. What did you tell Ms. Breslaw?

Mr. HUBBELL. I told her that we did not have any conflicts.

Mr. CHERTOFF. Did you tell her that there had been earlier representations of Madison by the Rose Law Firm?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you describe them?

Mr. HUBBELL. I think I said we had done some minor lending work for Madison back in the early 1980's.

Mr. CHERTOFF. What does "minor lending work" mean?

Mr. HUBBELL. There would be some loans that we would have been counsel to Madison on.

Mr. CHERTOFF. You mean collecting loans?

Mr. HUBBELL. No, no, I meant like closing loans.

Mr. CHERTOFF. Did she ask you for any details about that?

Mr. HUBBELL. No.

Mr. CHERTOFF. Now, did you refer her to some prior conversation that someone from the firm had had about what these transactions were?

Mr. HUBBELL. No, I did not.

Mr. CHERTOFF. Did you yourself give consideration to whether these transactions were conflicts?

Mr. HUBBELL. I looked at it in the context of the Frost litigation and whether there would be a conflict, and I did not see a conflict as to the prior representation since we were, to some extent, standing in the shoes of the institution.

Mr. CHERTOFF. Well, let's get into the nature of the prior representations and analyze that for a second. Were you familiar with the fact that in 1986, the Federal Home Loan Bank Board, which was reviewing Madison Guaranty, had described the acquisition of this Industrial Development Corporation property as a fictitious—involving a fictitious sale?

Mr. HUBBELL. Was I aware in 1986 at the time I was talking to April?

Mr. CHERTOFF. Yes, in 1989.

Mr. HUBBELL. No, I was not aware of that in 1989.

Mr. CHERTOFF. Were you aware of the fact that the firm had represented Madison Guaranty in connection with that acquisition?

Mr. HUBBELL. Yes, I was. I don't know that I had remembered it in 1989, but I do—I was aware of it.

Mr. CHERTOFF. Now, the way that deal worked back in 1986 was—and this is why it was described as a fictitious sale and I want to know what you knew about it at the time—was that there were two—there was a large tract of property that had a value that exceeded what the bank was allowed under law to acquire as speculative real estate. Do you remember that?

Mr. HUBBELL. I remember that initially Madison was going to acquire it all and then the transaction changed to where my father-in-law acquired part of it and Madison acquired part of it. I was not a party to the representation of Madison and my father-in-law in that acquisition, but I was aware of it generally.

Mr. CHERTOFF. Who was party? Who from the law firm handled that transaction?

Mr. HUBBELL. I believe Mr. Thrash, Tommy Thrash.

Mr. CHERTOFF. Is he a partner?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Who else was involved?

Mr. HUBBELL. I really don't know. I think it was just Mr. Thrash, but it would have been somebody else in the commercial section.

Mr. CHERTOFF. Well, I think you have before you, and if you don't, we will provide it to you. There's a copy of an invoice from the Rose Law Firm dated January 30, 1986, for legal services rendered through January 30, 1986, describing IDC, contract for sale, telephone conference with Seth Ward, a whole series of other items relating to some disposition of this property. Do you have this in front of you?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. This indicates that a number of lawyers from the firm handled the transaction, including H.R. Clinton. Do you recognize this bill?

Mr. HUBBELL. Yes, I have seen it in the last 2 years a lot.

Mr. CHERTOFF. Is this a standard bill from the Rose Law Firm?

Mr. HUBBELL. It is one of the type—forms of bills we sent, certainly one back then.

Mr. CHERTOFF. Was it your practice at the firm to send bills that would describe the matters that were worked on for a particular client and the lawyers who worked on those matters?

Mr. HUBBELL. Yes, normally. It really depended on what the clients' requests were and demands, but this is a standard bill.

Mr. CHERTOFF. Would you agree with me that this bill indicates Hillary Clinton was involved in rendering legal services in connection with this matter?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Do you know what those services were in connection with this matter?

Mr. HUBBELL. No, I do not. I would not think she would have been involved in the acquisition of the property because that was a commercial matter and that was not her area of expertise, but I don't know for sure.

Mr. CHERTOFF. Do you know whether she was the lead partner in handling matters with respect to Madison?

Mr. HUBBELL. She was the billing partner with regard to Madison, so she would have been in charge of sending and preparing bills, yes.

Mr. CHERTOFF. Was she one of the lawyers who brought the matter—the Madison representation into the firm?

Mr. HUBBELL. Yes, she was one of the lawyers.

Mr. CHERTOFF. Was that because of a request that John Latham, who was a senior officer at Madison Guaranty, had made?

Mr. HUBBELL. That she be one of——

Mr. CHERTOFF. Yes.

Mr. HUBBELL. I didn't understand it that way. I just don't know what Mr. Latham would have said.

Mr. CHERTOFF. What about Mr. McDougal, was he the cause of Mrs. Clinton being one of the people solicited from this?

Mr. HUBBELL. Mike, I don't know from that end. I know what I knew from my end but I don't know what Mr. McDougal and Mr. Latham would have said.

Mr. CHERTOFF. So all you knew was that she was one of the attorneys responsible for bringing it in but you don't know exactly how it came to be?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Did you understand that in the course of the litigation against Frost for malfeasance in their auditing and accounting work, a fairly standard defense by the accounting firm is to point at the management of the bank and say hey, whatever we did didn't matter; these guys were crooks?

Mr. HUBBELL. I have learned that, yes.

Mr. CHERTOFF. That's a pretty routine savings and loan litigation issue?

Mr. HUBBELL. Proximate cause issue in any kind of attorney or accountant malpractice is a proximate cause defense that we were not the cause of the problems, somebody else was.

Mr. CHERTOFF. And would you agree with me, therefore, that it would be relevant and likely to come up in a litigation like this, in a dispute between an accounting firm and a savings and loan, if the accounting firm pointed to particular transactions and indicated that the transactions were fraudulent, that would likely be a subject that would come up in a case?

Mr. HUBBELL. It would be relevant if that loan was going to be one of the loans used to try to obtain damages, yes.

Mr. CHERTOFF. Getting back to this particular transaction involving the Industrial Development Corporation, I think you have indicated to us that originally Madison was going to buy the whole property and then it was divided in two and your father-in-law took part and Madison took the rest.

Mr. HUBBELL. That's my understanding, yes.

Mr. CHERTOFF. Am I correct that the reason for that is the bank examiners eventually determined Madison was prohibited by regulation and law from investing that much money in a single piece of property?

Mr. HUBBELL. I have grown to understand that. I am not a commercial lawyer. That's what I heard. But I don't know if that's true or not.

Mr. CHERTOFF. In fairness to you, Mr. Hubbell, you are not on the bill that we have just described, January 30, 1986. You were not. We have to get that on the record.

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Now, the way this transaction was set up with your father-in-law, didn't Madison Guaranty lend him all of the money in order to make that purchase of the part of the property that was going to him?

Mr. HUBBELL. That is my understanding.

Mr. CHERTOFF. That was a non-recourse loan?

Mr. HUBBELL. That is my understanding.

Mr. CHERTOFF. What that means is if you default on the loan, the bank doesn't go after you personally, they just take the property and they have to settle for whatever the property is worth?

Mr. HUBBELL. They can.

Mr. CHERTOFF. And was it also part of this transaction that Mr. Ward—that the bank had an option to purchase the property back from Mr. Ward?

Mr. HUBBELL. That is my understanding.

Mr. CHERTOFF. Was it also part of the transaction that the bank would pay certain commissions to Mr. Ward and any associated expenses with the transaction?

Mr. HUBBELL. That was the position my father-in-law took in the litigation with Madison, yes.

Mr. CHERTOFF. Let me break it down. Was it your understanding that as part of the transaction, putting aside commissions, that at the very least Mr. Ward would be reimbursed for any associated expenses out of the purchase?

Mr. HUBBELL. Yes. That's what his position was, yes.

Mr. CHERTOFF. Now, did, in fact, your father-in-law soon thereafter relinquish the property to Madison Guaranty?

Mr. HUBBELL. I believe that it was sold and then, therefore, he conveyed it to Madison and Madison conveyed it to the ultimate purchasers.

Mr. CHERTOFF. Do you——

Mr. HUBBELL. I am not sure, Mike, whether he deeded it to Senator Fulbright, for example, or whether it was deeded from Madison. I just don't know.

Mr. CHERTOFF. Out of that large tract which was originally to be purchased by Madison Guaranty and then was broken up in what the examiners have described as this fictitious sale, a number of individual developments of land were planned; is that correct?

Mr. HUBBELL. My understanding was that they were going to attempt to sell off all of the property, yes, and there were separate types of parcels that lent each—lent themselves to different types of development.

Mr. CHERTOFF. One of those was something called Castle Grand?

Mr. HUBBELL. Yes, I think that came up, I think that was Madison's name, yes.

Mr. CHERTOFF. When you say that was Madison's name, what do you mean?

Mr. HUBBELL. I meant that I don't think there was somebody named Castle Grand out there. I think that's what Mr. McDougal came up with or somebody else did. I don't know. I knew the property when it was the old IDC property, so I never knew it as Castle Grand until Madison bought it.

Mr. CHERTOFF. When Madison bought it, they designated a portion for this Castle Grand development; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. The Rose Firm was also engaged to do some work in connection with the Castle Grand development; is that correct?

Mr. HUBBELL. Yes, I didn't know that initially but I do now.

Mr. CHERTOFF. Was that something you were made aware of at the time that you performed your conflicts check back in the time period that Ms. Breslaw first approached you?

Mr. HUBBELL. I don't believe so. I just don't remember the issue of doing some regulatory work coming up when we did the conflicts check. It might have, but the memos that I've seen since then only

reflect what Rick Massey and others told me about the securities work. I don't remember the regulatory work coming up, Mike.

Mr. CHERTOFF. I don't know if you have it in the package in front of you. If you don't, we will furnish it to you. It is ROF 2, Bates numbers 02929 through 02931. Actually, I think it is a 4-page memo to Hillary Clinton from Rick Donovan dated March 4, 1986, "re: Madison Guaranty Savings & Loan/IDC."

Mr. HUBBELL. Mike, I don't have that. I have seen that memo.

Mr. CHERTOFF. We are going to get it to you in just a second. I want to see if this will help you.

Mr. Hubbell, this is a memorandum from Rick Donovan, who was a lawyer——

Mr. HUBBELL. That's not what she handed me, Mike.

Mr. CHERTOFF. Oh, I'm sorry. I will give you my copy to refresh your recollection.

Mr. HUBBELL. Yeah, I have seen this.

Mr. CHERTOFF. You have seen this before?

Mr. HUBBELL. I have seen it. I don't know when I first saw it. I believe it was after January 1989.

Mr. CHERTOFF. This is a memorandum which Mr. Rick Donovan did for Mrs. Clinton regarding certain regulatory questions about whether utility—what were the requirements for forming a utility within this project; right?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Was it your understanding that the people like Mr. McDougal and Mr. Tucker who were involved in this development also wanted to have a utility, a water utility that they owned on the project?

Mr. HUBBELL. Yes, as I understand it, that was one of the assets that had been acquired and Mr. Tucker was buying that asset.

Mr. CHERTOFF. In fact, in terms of some of the lending and some of the financing of this particular project, the ability to operate that water project was an important ingredient in getting that financing; right?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. The Rose Law Firm was involved in that financing transaction as well?

Mr. HUBBELL. I don't believe we closed that transaction. I think we were involved in doing some regulatory research.

Mr. CHERTOFF. Was the regulatory research done by the Rose Law Firm in connection with the water utility used and relied upon in connection with the financing of that particular transaction?

Mr. HUBBELL. You would have to ask the people who bought it and closed it, Mike. I don't know the answer to that question.

Mr. CHERTOFF. Again, in fairness the memo lists Mrs. Clinton and Mr. Donovan. You are not listed on the memo.

Mr. HUBBELL. Right. And to make it clear, my understanding was that the firm represented the institution and the borrower at the purchase of the IDC property. I'm not sure that the firm represented anybody at the subsequent resale of those parcels.

Mr. CHERTOFF. But the firm did do work analyzing the regulatory requirements in terms of the utility, and that was relied upon in the subsequent resale?

Mr. HUBBELL. I don't know if it was relied on in the subsequent resale. We did do the work, but who relied on it I don't know, Mike. I just don't have the answer to that.

Mr. CHERTOFF. Now, in addition to that you've made mention before—and, actually, we can reclaim that memo.

Mr. HUBBELL. Sure.

Mr. CHERTOFF. You've made mention before of the fact that you have seen documentation that the firm was also involved in trying to obtain permission from the Arkansas Securities Department, headed at that time by Beverly Bassett-Schaffer, to issue a class of nonvoting preferred stock to increase the amount of money in Madison Guaranty; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. And, again, in laymen's terms what that means is the bank wanted to raise money, they wanted to issue more stock to the public but they didn't want it to be the kind of stock the public can vote and therefore have some control over the institution; they wanted it to be stock that's nonvoting stock where you have a financial interest and you put money up but you don't have any vote in the way the bank conducts its business.

Mr. HUBBELL. I am going to again plead a little bit of ignorance. I was aware that the firm represented Madison in attempting to get approval for preferred stock offering and to get approval to have a broker-dealer operate, as I understand it, through the institution. What the nature of the specific request was, I am not familiar with. I just know that we did that, Mike.

So I could not tell you if it was voting or nonvoting stock. I can only tell you that we were before the Arkansas Securities Department to attempt to raise capital, but the specific details, that was done by Mr. Massey.

Mr. CHERTOFF. On this documentation that you have seen, the names you've seen are Mr. Massey and Mrs. Clinton; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. Mrs. Clinton is the partner in the firm who wrote a letter to Beverly Bassett-Schaffer or submitted the proposal?

Mr. HUBBELL. The only letter I have seen is one coming back to Mrs. Clinton from Ms. Schaffer. I don't remember a letter from Hillary Clinton going to Beverly. It is possible, but I don't remember one like that.

Mr. CHERTOFF. Now, when you were evaluating the issue of conflicts, did you consider whether in the course of proposing that authorization to issue the stock, some of the firm might, in fact, have submitted some of the Frost accounting materials to the Arkansas Securities Department?

Mr. HUBBELL. I did not at that time. I did at a subsequent time.

Mr. CHERTOFF. And at a subsequent time, did you raise that with Ms. Breslaw?

Mr. HUBBELL. I believe it was but I cannot say for certain, because it became an issue when I understood the extent of what was submitted to the Securities Department.

Mr. CHERTOFF. What do you mean by that?

Mr. HUBBELL. Well, I was looking at it from the standpoint of all of a sudden when we went to the Securities Department to get the file on the institution, there were a lot of submissions, including

the financial statements. I had to look at it, is the firm potentially a witness, is any position that we took at the Securities Department inconsistent with the position we were taking with the lawsuit in Frost. I determined it was not, and, in fact, it was consistent with the position we were taking in the Frost lawsuit. So it wasn't inconsistent, therefore a conflict, but I did consider it then.

Mr. CHERTOFF. Did you raise that with Ms. Breslaw?

Mr. HUBBELL. Mike, I don't have any specific memory that I did or that I did not.

Mr. CHERTOFF. Was this event where you looked at the filing at the Arkansas Securities Department something that occurred after the time that Ms. Breslaw had raised with you the issue of your relationship with your father-in-law?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. So you were, I guess, sensitive to the fact that someone within the FDIC or the RTC had raised a question about whether the conflicts check performed by the firm had been adequate; right?

Mr. HUBBELL. No, I think the issue involving my father-in-law was more directed at me personally than at the conflicts check.

Mr. CHERTOFF. Did that cause you to go back and examine whether your father-in-law's involvement in the original acquisition of this property might create a conflict if, in fact, that acquisition were the subject—became part of the litigation?

Mr. HUBBELL. That was an issue that we had discussed among ourselves on whether to include that in the damage calculation, and there were certain steps taken with regard to some confidential reports to keep me from having certain knowledge about those reports.

Mr. CHERTOFF. Who is the "we" who discussed including this in the damage calculation?

Mr. HUBBELL. Mr. Gary Speed, Mr. Rick Donovan. There was an accounting firm that we employed as an expert witness, and it was one of the accounting firms that ultimately went bankrupt so I can't remember which one it was, but the man we were dealing with was a Mr. Blackwell.

Mr. CHERTOFF. So you say that you actually took yourself out of discussions about the portion of the case relating to Seth Ward because you felt that there was a conflict with respect to that issue personally?

Mr. HUBBELL. No, I was trying to be sensitive to concerns being raised by employees of the FDIC about my involvement. There was a report done by one of the prior counsels that involved a discussion of my father-in-law, and they—this was worked out with people that I would not look at that report for a period of time.

Mr. CHERTOFF. But that didn't spur a second look at whether the firm's involvement in the actual transaction with your father-in-law would be a potential problem in the representation?

Mr. HUBBELL. No, it did not spur that discussion.

Mr. CHERTOFF. Now, I want to give you what has been marked as Bates RLF 2–03030 and 03031. I think you have a copy. I want to put it up on the Elmo. This is a recap of fees from Madison Guaranty Savings & Loan to the Rose Law Firm over the period

of time from 1985 until September 1987. Have you ever seen this before?

Mr. HUBBELL. Yes, I have.

Mr. CHERTOFF. What is it?

Mr. HUBBELL. It appears to be a recap of the fees charged to Madison by the firm.

Mr. CHERTOFF. Did you see this in connection with a subsequent investigation of this conflict of interest issue?

Mr. HUBBELL. I don't know who first showed me this document. It was either the Special Prosecutor or one of the people who have asked me questions on this.

Mr. CHERTOFF. Now, as you go through this bill or this recap, items are listed as "Madison Guaranty" and sometimes they are listed as "Madison Guaranty/IDC/stock offering/limited partnership /Babcock." Was it your custom, as I think it probably is in a lot of law firms, when you're doing multiple matters for a single client to break down the sub-matters as separate files?

Mr. HUBBELL. Yes, the custom in the firm was if you had a client, then as new matters would come in, you would create a sub-number and then the partner in charge of billing would determine how it was billed, but you would keep those matters separately.

Mr. CHERTOFF. In addition, when fees are listed and attributed to particular attorneys, was it your custom at the firm to do billing sheets that would indicate how many hours an individual attorney spent working on a particular matter?

Mr. HUBBELL. Each member or most members kept records of the time they spent on various matters that would be fed into the computer, and then there would be a monthly billing report that the attorney in charge of billing could use in billing the client.

Mr. CHERTOFF. Do you remember—to try to get a sense—for example, on page 2, January 1986, there is a $2,731 entry for that month under "Clinton, Madison Guaranty stock offering and IDC," which is the largest entry for all the lawyers working on Madison matters that month. To help us evaluate what that means in terms of time, what was partner time going for per hour back in 1986 approximately?

Mr. HUBBELL. It was probably somewhere between $100 to $140 an hour.

Mr. CHERTOFF. And so if we took that range and divided it into the $2,700, we would be close to what the number of hours worked on the matter were?

Mr. HUBBELL. Not necessarily.

Mr. CHERTOFF. What would be the difference?

Mr. HUBBELL. Well, the partner could determine to bill at a rate higher than the normal hourly rate.

Mr. CHERTOFF. So in other words, I guess a partner could decide for a particular client they wanted to bill $500 an hour?

Mr. HUBBELL. It is not even an hour. You might—on a loan closing for example, fees were not normally charged based on hourly rates but were charged to some extent based on the size of the loan. I am not saying that happened in this case because I don't know. I am just saying that without additional information you really could not tell a whole lot from this.

Mr. CHERTOFF. When you met with Ms. Breslaw, did you know or do you know now what Madison Guaranty/limited partnership was? What was the work you did on the sub-file Madison Guaranty/limited partnership?

Mr. HUBBELL. I don't know to this day.

Mr. CHERTOFF. What was Madison Guaranty/Babcock?

Mr. HUBBELL. I do not know. I know that there was some loans involving a Mr. Babcock, but whether that was Babcock loans or Babcock collection, I do not know.

Mr. CHERTOFF. I see, Mr. Chairman, my time is up and I think I'll come back to this when it swings over.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Mr. Hubbell, let me fast-forward you in time now to when you began to work in Washington and ask you again to recap for us when it was that you began work at the Department of Justice.

Mr. HUBBELL. I began to work on January 21, 1993.

Mr. BEN-VENISTE. What was your title?

Mr. HUBBELL. At that time I was an Assistant to the Attorney General.

Mr. BEN-VENISTE. Did there come a time when you became an Associate Attorney General?

Mr. HUBBELL. Yes, in May 1993, I was confirmed by the Senate and sworn in as Associate Attorney General.

Mr. BEN-VENISTE. That's basically the time period that I would like to cover with you on the issue of the criminal referrals relating to Madison and relating to Judge Hale.

As an Associate Attorney General, what were your responsibilities?

Mr. HUBBELL. At that time my responsibilities—you are talking about the period—see, I wasn't——

Mr. BEN-VENISTE. May on.

Mr. HUBBELL. May on, my responsibilities were directly overseeing what were called the five civil divisions, although they did have criminal responsibility: The Antitrust Division, the Civil Division, the Tax Division, the Environmental Division and I am missing one—the Tax Division. In addition, I had direct supervision over the Immigration and Naturalization Service, the Office of Legislative Affairs, the Office of Legal Counseling, and several other Departments within the Department of Justice.

Mr. BEN-VENISTE. Now, if I understand your position at that time, while certain of those divisions like the Civil Rights Division, the——

Mr. HUBBELL. I forgot that and I should not have, I'm sorry.

Mr. BEN-VENISTE. —Antitrust Division had ancillary criminal enforcement responsibilities, but for the most part, by and large, your responsibilities were in the civil area; is that correct?

Mr. HUBBELL. That's right, that's correct.

Mr. BEN-VENISTE. You had no supervisory authority over the Criminal Division, or the Fraud Section, or the Public Integrity Section?

Mr. HUBBELL. No, they reported directly to Phil Heymann.

Mr. BEN-VENISTE. Now, when did you learn for the first time and under what circumstances did you learn of the criminal referrals in connection with Madison Guaranty?

Mr. HUBBELL. At some point in either—I believe it was in September 1993, a memo crossed my desk that said that there had been a referral to the U.S. Attorney in Little Rock, Arkansas.

Mr. BEN-VENISTE. Did you take any action with respect to that memo?

Mr. HUBBELL. No, I did not.

Mr. BEN-VENISTE. Did you speak to anyone with respect to that memo?

Mr. HUBBELL. Not at that point, I did not.

Mr. BEN-VENISTE. All right. Did there come a time when you formally recused yourself?

Mr. HUBBELL. There came a time shortly thereafter where I recused orally and then at a later time, I recused in a formal memo my entire office.

Mr. BEN-VENISTE. What do you recall about the time sequence of those events, sir?

Mr. HUBBELL. At some point, an issue was raised where Mr. Carl Stern had asked me to answer some questions that were coming up to him regarding Madison.

Mr. BEN-VENISTE. For the record, who is Carl Stern or what position did he hold at that time?

Mr. HUBBELL. At that time he was the Director of Public Affairs.

Mr. BEN-VENISTE. I know him as an alumnus of Stuyvesant High School in New York City, a great high school.

Mr. HUBBELL. Anyway, we were at a meeting with the Attorney General. We were leaving that meeting and Carl said I need to ask you about some questions that are coming up, and Mr. Nathan, who was with me at that time, said, Web, you need to stay out of that. Your firm used to represent Madison. I said you're right, I'm recused and we went from there.

Mr. BEN-VENISTE. The conversations with Irvin Nathan, were those one-on-one conversations?

Mr. HUBBELL. I believe Mr. Stern was there, but I know—it was between Mr. Nathan and I. They subsequently developed as I recused the entire office, but the first one was Mr. Nathan, and I believe Mr. Stern was there.

Mr. BEN-VENISTE. What position did Mr. Nathan hold at that time?

Mr. HUBBELL. I am not sure of his precise title but he was Phil Heymann's Chief Deputy in the Deputy's Office.

Mr. BEN-VENISTE. You mentioned formalizing in writing the oral recusal that had been made in the conversations with Mr. Nathan and Mr. Stern.

Mr. HUBBELL. I formalized it in writing and expanded it, yes.

Mr. BEN-VENISTE. Who, if anyone, recommended that this procedure be taken to formalize and expand?

Mr. HUBBELL. I believe I raised it initially. Mr. Margolis, I believe, was involved. Perhaps Janice Posada, who was the Chief Ethics Officer at the Justice Department, helped me in formalizing that to prevent me—the formal recusal and the recusal involving

my office was to prevent any paperwork involving the case from inadvertently coming to my office.

Mr. BEN-VENISTE. Were you advised back in the summer and fall of 1993, what the regular procedure was, if there was one, for recusing on a particular matter?

Mr. HUBBELL. I had been advised when I first came to the Justice Department as recusal issues came up that they—Janice did not recommend putting recusals in writing unless they needed to be, and so I was following that practice until the specific instance came up, and then I would ask that office to help me prepare a formal recusal.

Mr. BEN-VENISTE. This memo that you mentioned had come across your desk, did the formal step of putting the recusal in writing prevent any further memos from coming to your attention in the regular routing system?

Mr. HUBBELL. My understanding was that once I recused my entire office, that the Office of Executive Secretary was not supposed to direct any of those memos, even to anybody within my office. What I mean, "my office," that being my deputies as well.

Mr. BEN-VENISTE. Now, we have heard testimony from Mr. Coleman this morning about telephone calls made to you during the late spring and early summer of 1993. Do you recall, first of all, do you know who Mr. Coleman is?

Mr. HUBBELL. Yes, I do.

Mr. BEN-VENISTE. You knew him to be an attorney practicing law in Little Rock?

Mr. HUBBELL. Yes, I did.

Mr. BEN-VENISTE. Did Mr. Coleman mention to you in those conversations anything about the David Hale matter or any investigation involving Mr. Hale or his company?

Mr. HUBBELL. No, he did not.

Mr. BEN-VENISTE. How many times do you recall speaking with Mr. Coleman during that timeframe?

Mr. HUBBELL. My recollection is the same as his, that we had two conversations, although we had many more attempts to make contact, but my recollection is there were two precise times that we talked.

Mr. BEN-VENISTE. Did there come a time when you received a telephone call or received an inquiry from Mr. Kennedy with respect to David Hale?

Mr. HUBBELL. Yes.

Mr. BEN-VENISTE. What were the circumstances of that, Mr. Hubbell?

Mr. HUBBELL. At some point, I believe it was in late August or early September but I may be off several weeks, I just don't know, Bill called me and asked me if in the course of my work in the campaign, did I know of any connection between Mr. Hale and Madison and McDougal. I told Bill no. I was actually wrong, but I told him no, I was not aware of any.

Mr. BEN-VENISTE. In what respect were you wrong?

Mr. HUBBELL. Well, that in the course of my representation of Madison in the Frost litigation, I was aware that there was connection between Mr. Hale and the McDougals.

Mr. BEN-VENISTE. Now——

Mr. HUBBELL. I just plain forgot it.

Mr. BEN-VENISTE. Did any newspaper articles come to your attention at about the same time as your conversations with Mr. Bill Kennedy?

Mr. HUBBELL. About Mr. Hale?

Mr. BEN-VENISTE. Yes.

Mr. HUBBELL. At some point there were newspaper articles coming out that Mr. Hale was about to be indicted and there was an article ultimately that said that Mr. Coleman had tried to call Mr. Kennedy——

Mr. BEN-VENISTE. Did Mr.——

Mr. HUBBELL. —or talk to Mr. Kennedy.

Mr. BEN-VENISTE. In your conversation with Mr. Kennedy, had he explained to you the reason for the inquiry he had made to you?

Mr. HUBBELL. I said now I know why you were asking me about—I believe it went something like this: I know now why you were calling me and asking me about Hale and McDougal. He said that's right, that's why I was calling you, Coleman called me. And I said I'm surprised Randy didn't call me directly, because he had called me on this other matter and that was the extent of it.

Mr. BEN-VENISTE. Let me ask you this, Mr. Hubbell, very specifically, whether anyone asked you to take any action of any sort relating to Mr. Hale or Capital Management or any of those matters?

Mr. HUBBELL. Nobody asked me nor did I do anything.

Mr. BEN-VENISTE. Now, Mr. Hale was indicted, I believe, on September 23, 1993. Is it your testimony that up until that point, no one from the White House other than Mr. Kennedy had mentioned Mr. Hale to you?

Mr. HUBBELL. Mr. Kennedy is the only one who ever mentioned Mr. Hale to me, that's correct.

Mr. BEN-VENISTE. Let me ask you, sir, whether you know Paula Casey?

Mr. HUBBELL. I do.

Mr. BEN-VENISTE. When did you first meet Paula Casey?

Mr. HUBBELL. I believe the first time I met Ms. Casey was in January 1994. It is possible that I met her at some social occasion in Arkansas prior to that, but I don't believe so.

Mr. BEN-VENISTE. And did you have anything to do in any way, shape or form with the nomination of Ms. Casey to be U.S. Attorney in Arkansas?

Mr. HUBBELL. I certainly was aware of it because I was involved in the U.S. Attorneys' nominations. When she came to interview the Attorney General I must have been out of the office because normally I would interview with the Attorney General those nominees, but I remember the Attorney General saying, "Web, I met your U.S. Attorney from the Eastern District and I'm really impressed with her," and I said I'm sorry I missed her.

I did have some—you said about her. I had numerous phone calls about the position because people knew that I was here and knew that there was a lot of interest in that position, but specifically about her and the nomination process, although I was—it was technically under my supervision, I didn't have anything to do with it.

Mr. BEN-VENISTE. Did you have any conversations with Ms. Casey at any time related to either her handling of the Hale or

McDougal Capital Management Services or Madison Bank matters in any way, shape or form?

Mr. HUBBELL. No, I did not.

Mr. BEN-VENISTE. Mr. Chairman, I will cede the time remaining back to the Majority.

The CHAIRMAN. Thank you very much.

Mr. Chertoff or Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I have a few questions stemming from listening to what's gone on today and then one left over from yesterday that I would like resolved and then yield to Mr. Chertoff.

It is my understanding, and my staff is frantically looking for confirmation of this, that in her public statements, Mrs. Clinton always said that she didn't have anything really to do with the Madison matter while she was at the Rose Law Firm. Do you have any recollection of those statements?

Mr. HUBBELL. Yes, I do, Senator.

Senator BENNETT. Have I characterized it correctly?

Mr. HUBBELL. No, you have not, Senator.

Senator BENNETT. What is it that she said?

Mr. HUBBELL. I believe when it initially came up in the campaign, the issue was whether Mrs. Clinton had had substantial involvement in the securities matter before Beverly Bassett-Schaffer, and her recollection was at that time she had very little, if nothing, to do with that matter, and that is consistent with what the records of the firm reflected at that time.

I don't think she said that she had nothing to do with Madison. She was the billing partner, and she would send bills. Her involvement primarily, though, was as the point person with the client.

You know, you have me sitting here trying to think of what she said. She may have been quoted a million times. I was involved in trying to look with regard to the securities matter during the campaign.

Senator BENNETT. I am sure we will both be helped by a battery of folks with computers with NEXIS software——

Mr. HUBBELL. I'll be glad to try to go over those.

Senator BENNETT. —that will be glad to go through that. I have taken this recap of fees from Madison Guaranty Savings & Loan and done a little calculation on it, and I find that from May 1985 through December 1985, it's fairly clear the lead partner handling Madison matters is, I assume, Mr. Massey?

Mr. HUBBELL. He was not a partner at that time. He was an associate.

Senator BENNETT. He was an associate?

Mr. HUBBELL. Yes.

Senator BENNETT. $5,800, rounded it off—being a businessman, I round things off. Lawyers go to the penny, but I try to summarize. OK. Mr. Massey, associate, billed approximately $5,800 to that account and Mrs. Clinton $1,300, so the impression here is clearly the associate is doing most of the work. Now, would she have been the partner overseeing that particular associate?

Mr. HUBBELL. She was in this case. It was unusual but she was, yes.

Senator BENNETT. She was. And you see the trend change drastically when you turn the page and go to January, Mr. Massey bills $1,100 in January, while Mrs. Clinton bills roughly $3,500. Mr. Massey then disappears, with the exception of $112 in May, and Mrs. Clinton with that $3,500 heavy slug in January then clearly takes it over from January through July. There's almost a symmetrical reverse, whereas before the 7-month period, Mr. Massey billed $5,800 and Mrs. Clinton $1,300. In this 7-month period from January to July, Mrs. Clinton bills $5,400, Mr. Massey $1,100.

So it is clear from this to me that she was very heavily involved in Madison Guaranty matters and it looks like the dominant matter here was the stock offering. Is that a fair summary of——

Mr. HUBBELL. Stock offerings?

Senator BENNETT. Where it says, "Madison Guaranty stock offering."

Mr. HUBBELL. And IDC, Senator.

Senator BENNETT. And IDC, that's correct.

Mr. HUBBELL. I think that's why that number may be higher.

Senator BENNETT. So you think this was not reflective of her time but that it was a percentage of the deal?

Mr. HUBBELL. No, I think it was reflective of that the matter that she was working on was the IDC matter, not the stock offering. I don't know how much time—at one time the firm had those records. I don't know whether this Committee has them or not.

Senator BENNETT. I don't understand and, frankly, I don't much care as to the detail of how big a role IDC played with respect to everything else, but the pattern is clear that in 1985 Mr. Massey did almost all the work, Mrs. Clinton oversaw that. Then in 1986 it shifts with Mrs. Clinton doing all the work, at least as is reflected in the billing circumstance, and Mr. Massey virtually dropping off the screen altogether.

Mr. HUBBELL. I think there's a likely explanation for that.

Senator BENNETT. Well, this is a Q and A that has just been handed to me that was reported in the Associated Press. Is that Mrs. Clinton? All right. So this is her press conference where she was asked about these things and she said—I'll just get it in the record. You can comment, obviously, if you like.

1985, I believe, maybe 1986 there was an effort made on the part of various financial institutions around the country to increase their capital net worth. They began looking for ways to do that. There was a very bright young associate in our law firm.

I assume that's Mr. Massey:

Who had a relationship with one of the officers at Madison, a young man who he had known. They began talking.

She goes through and describes that and she said:

I arranged that the firm would be paid a $2,000 a month retainer, and that was ordinary and customary, that would be billed against, unlike retainers from really big law firms that if you pay a retainer, they keep it no matter whether they do any work for you, this was really an advance against billing. That was arranged.

The young attorney, the young bank officer did all the work. And the letter was sent. But because I was what you call the billing attorney, in other words I had to send the bill to get the payment made, my name was put at the bottom of the letter.

The impression from this is that she really had nothing much to do with it, that was certainly the impression that my memory told me, having watched that press conference. Now, I have the billing sheet in front of me. The two do not really coincide, unless you have an explanation for it.

Mr. HUBBELL. I believe it does. I think what she was saying initially—and it's consistent with, I think, what everybody has said—is that initially Mr. Massey and Mr. Latham, who I believe is the man he had a relationship with—and I mean "relationship" in that they were friends—were anxious to try to do a preferred stock offering to raise capital for the institution, and that is reflected in the work that was in 1985.

The issue that the media during the campaign was focused on was also whether she was involved in attempting to influence the regulator, that being Ms. Schaffer, and she says she was not, her role was minor, and that is also consistent with that.

After it was impossible to go forward with the stock offering, we were still receiving the retainer and doing other work, and that is also consistent with this bill, and Mrs. Clinton would have been more involved in that type of work than a stock offering. So that is how I would attempt—without the bill, Senator—this is just a recap of the fee—and without the hourly rate, how I think it went down.

Senator BENNETT. Well, if I can go back to her comments on the press conference, which I have a little trouble reconciling with what you've just said, she says:

> It was not an area that I practiced in. It was not an area that I really know anything to speak of about. At that point the regulatory authorities, namely Beverly Bassett-Schaffer, answered the legal question and the legal question was yes, it is permissible under Arkansas law to issue this preferred stock. Then the question moved on to the second phase in which I had no involvement, that I have any memory of, or anyone that I have talked with, that was trying to determine whether Madison could go forward. I think that the securities commissioner acted absolutely appropriately. She answered the legal question, yes, it is legal to do this. But as to Madison, she laid out conditions that had to be met for Madison to do it, and Madison could never meet those conditions, so they were never issued preferred stock.

Mr. HUBBELL. I think that is consistent with what I have said, is that after the securities offering, she's talking about the securities matter. She didn't have that much involvement, that after that, there was still—we were still receiving the retainer and that she did other work, but with regard to the securities matter, she was not that involved.

Senator BENNETT. So let me ask you this one last question about the bill. These numbers do not coincide with the $2,000 a month retainer.

Mr. HUBBELL. That's—what do you mean, Senator?

Senator BENNETT. She says, "I arranged that the firm would be paid a $2,000 a month retainer that would be billed against, unlike really big law firms, an advance against billing that was arranged." These numbers don't add up to $2,000 a month.

Mr. HUBBELL. No, they don't, and the institution accrued a credit at the firm. The $2,000 a month was put in a trust account. We would bill against that trust account, and at the end of—when we

discontinued the representation of Madison, money was returned to Madison from the firm.

Senator BENNETT. I see. One last question, if I may, Mr. Chairman, one I have really been dying to ask. You read the New York Times——

Mr. HUBBELL. I used to.

Senator BENNETT. —I will quote this morning's New York Times. "Ms. Breslaw testified that when she hired the Rose Law Firm, she did not know that the examiners had criticized the Castle Grand ideal. 'If I had known then all the information that's available now,' Ms. Breslaw said, 'I doubt I would have hired them.'"

"When Senator Lauch Faircloth, Republican of North Carolina, asked her whether she believed that Mr. Hubbell lied to her about his work on behalf of Madison and his father-in-law, Ms. Breslaw said, 'yes, sir, I do.'"

Would you like to comment on that?

Mr. HUBBELL. I heard that statement. I have not had a chance to talk to Ms. Breslaw since, I guess, September 1993. I would love the opportunity to do so, to see what she was talking about. I'm sorry she feels that way. I don't know exactly what the basis of that is, but in any regard, I would apologize if I did lie to her but I don't believe I did, Senator, but I don't know what the basis of her statement was.

Senator BENNETT. My time is up. I don't mean to be a prophet, but I would predict that Mr. Chertoff might give you the opportunity to explore that a little further.

Mr. HUBBELL. That's fine.

The CHAIRMAN. Senator Sarbanes.

Mr. SARBANES. I yield it.

Mr. CHERTOFF. Mr. Hubbell, let me pick up on the invitation, but first let me go back to the issue of the bill, because I think you may have misunderstood the thrust of Senator Bennett's question. It's not that if you look at the bill in let's say January 1986, Madison is running a credit with you, in other words that there's an unused portion of the retainer, it's that you have—you are billing, for example, in January 1986 over $5,000.

It looks as if the amounts of money are exceeding the $2,000 a month retainer, that they, in fact, were giving you more work than the $2,000 that was suggested in the portion of Mrs. Clinton's press conference. Does that jibe with your recollection?

Mr. HUBBELL. My recollection was that upon taking on the litigation—I mean the representation, after there was an initial deposit to pay an old bill that Mr. McDougal owed, that we would get $2,000 a month from Madison, and that would be—sit in the trust account until it was billed against, and so that by the time the bill was sent in December 1986, there had been an accumulated amount that you could bill against.

Now, whether they ultimately owed us a little money or we owed them money at the end of the billing period, I couldn't tell you. I never looked at the cash flow. But I do know that in 1986, we still had funds, Madison funds, in the trust account that had not been billed against and those funds had been sent back.

I don't think the representation was that we would never bill more than $2,000 in any 1 month. What I think the proposed ar-

rangement with the firm was, to make sure that nobody got too far out of line, that we would receive $2,000 a month that would be billed against.

Mr. CHERTOFF. I want to follow up first about this issue on the stock offering.

Senator BENNETT. Would you yield? I've just found another paragraph. I apologize. The question in Mrs. Clinton's press conference that created that whole circumstance is this one, and I didn't get the question. It again refreshes my memory.

Question: I'll ask you one other thing that I've had problems with. During the campaign, I think it was right after the primary debate between Jerry Brown and your husband, you made a statement in I think a Chicago restaurant that you never did any regulatory work for the Madison Guaranty. When the letter went to Beverly Bassett-Schaffer about perhaps the legality of offering preferred stock, your name was at the bottom of the letter.

Answer: Right.

Question: Could you explain that?

Answer: Yes.

Then she goes on with the explanation that we have. But there was on the record at some point, if my memory has not failed me, a flat statement from Hillary Clinton that she did not do any regulatory work for Madison Guaranty. Are you now saying that this billing does not consist of any regulatory work for Madison Guaranty?

Mr. HUBBELL. Senator, all I can do is go back to the time that she was asked that question. I don't know about a Chicago restaurant or Jerry Brown or anything else, but I know it came up in the campaign and her memory was that she had done no regulatory work. We went back and looked at the—I went back personally and looked at the firm's bill for that period of time, and there was an entry for a telephone conversation with Ms. Bassett.

I interviewed Mr. Massey about that conversation to see what the extent of Mrs. Clinton's involvement was. It was that Mr. Massey was in her office when Ms. Bassett returned the call, and that they had a short conference and the bill showed a quarter of an hour billed with regard to that one regulatory matter.

I informed the campaign—that you should not make flat statements, but her memory may have been accurate at that time. My recollection of the actual bills, not the recap, was that her involvement with the Securities Department was minimal.

Senator BENNETT. All of us up here know about campaign statements, but there is a more troubling statement—the glories of staff, they keep feeding you things when you get started—comes out of the Facts On File, World News Digest dated August 24, 1995, and here is the relevant paragraph.

"The RTC reported that Hillary Clinton was the so-called billing partner under whose names the firm's invoices and expenditures on the Madison account were authorized. In an affidavit quoted by the RTC, however, Clinton said she was 'not in charge' of any of Rose's operations for Madison and was 'not involved in the day-to-day work.'"

I would find that statement contradicted by this summary of bills. Would you?

Mr. HUBBELL. I have learned never to believe what I read in the papers, Senator, so I don't know if that affidavit exists or not, so

I have to give that caveat. I am not a firm believer that what is quoted in the newspaper is necessarily totally accurate or not taken out of context.

Senator BENNETT. I am not either. I am very sympathetic with you on that position. Let's assume——

Mr. HUBBELL. OK. What I am trying to say is that the nature of the representation was initially to do securities work. Mrs. Clinton was not a securities lawyer, but because Mr. Massey was an associate, the firm felt strongly that a partner—he should report to a partner and Mrs. Clinton was chosen.

Senator BENNETT. I understand that, and the billing reflects that for the first 7-month period, Mr. Massey gets all of the billing and the billing for her services is relatively minor by comparison, but then you go into 1986 and the thing completely turns around and he disappears and her name appears, not just for signing a letter, but month after month as the number one earner on this issue from this law firm.

Now, I agree with you completely about the newspaper. I assume this affidavit exists, and I assume this Committee will be able to get a hold of it if it does, but under that assumption that the affidavit exists and this is what was in it, and we can determine subsequently whether that's indeed the fact, would you not agree that this billing sheet does not coincide with the statement that she was not involved in the day-to-day work, since no other lawyer's name appears for billing purposes in some of those months?

Mr. HUBBELL. I think after January she appears to have done some work for Madison. It doesn't look to be that much, Senator.

Senator BENNETT. It doesn't look to be that much in terms of the overall firm's billings, I'm sure, but on the Madison sheet, she stands alone. That much, she does it all—I misspoke myself. In May, Mr. Massey did do $112.50 worth and B. Arnold, whoever that is, did $48 worth. Other than that, all of the entries are Mrs. Clinton and it's $1,400 worth of work. As I say, if you take the whole period from January to July, there's $5,400 for Mrs. Clinton and $1,100 for Mr. Massey and then very minor amounts for everybody else. She did it all.

Mr. HUBBELL. I don't mean to split hairs with you, but what I'm trying to say is by that time, the securities matter was almost over, there wasn't going to be a securities matter, and the nature of the work changed. Her focus, the focus of the questions back during the campaign, and I don't know what else we can talk about, was on the securities matter. I think that's where her mind was, but I can assure you one thing: Mrs. Clinton can speak for herself.

Senator BENNETT. I'm sure. All right. Thank you. I understand the affidavit is on its way, and we will have it. I will just make the comment again, as a non-lawyer who has reviewed legal bills and has made out some rather large checks for legal bills, I lose the distinction between saying well, I'm not involved in the day-to-day work and then here is a bill for nearly $6,000 on my time. Oh, that was something else.

Mr. HUBBELL. I don't think she said that.

Senator BENNETT. That's what I heard you just say.

Mr. HUBBELL. I hope I haven't said that. I was trying to make a distinction between a securities matter and other work, Senator. I must be very inarticulate, because that's the extent——

Senator BENNETT. No, I heard you make the distinction. My point is paying the bill I think it's a distinction that the client would miss.

Mr. CHERTOFF. Mr. Hubbell, this isn't coming together for me, because the—you've just said that your point is that Mrs. Clinton's statement was simply the securities work, she was trying to explain that she had a minimal role in obtaining the authorization from Beverly Bassett to issue the stock. Is that your position?

Mr. HUBBELL. Yes, that is my position. I don't know what her position is.

Mr. CHERTOFF. Well, the stock—the negotiation—the effort to get the stock, occurred in May 1985, and the letter from Mrs. Clinton to Jim McDougal talking about how they had obtained the approval is dated May 23, 1985.

Let's go to the May 1985 bill, which is the first bill. Rick Massey put $695 billing on that—in May 1985, which is the time period for this securities application. Hillary Clinton puts $840.

Now, I guess it is possible that she's billing at a tremendously higher rate, but unless she's billing at what I would imagine is a very substantial rate, a premium rate in Arkansas as of that time, she is at least putting some hours into this matter in May. Would you agree with me?

Mr. HUBBELL. I don't have a copy—Mike, again, I am not trying to split hairs, but we've seen other bills that kind of delineate. This bill seems to be just one bill, and I don't know what other work might have been done in May.

Mr. CHERTOFF. There are two possibilities here, and I don't know that either one is going to make you happy. One possibility is that she was billing at her normal rate of between $100 and $140, in which case she would have done 6 hours worth of work on this securities issue, not no work.

The other is that there is some kind of a premium arrangement she had with Mr. McDougal where, unlike her ordinary fees, when she works on Madison matters, she gets some extra amount; she's billing at some super high rate. And that raises certain other issues when you are engaging in relationships with clients and why are you getting an extra high rate. Can you give us some enlightenment as to which it is?

Mr. HUBBELL. I guess the third possibility is there was a matter other than securities work that was being done in May, Mike.

Mr. CHERTOFF. Didn't you tell us that the first matter that came in was a matter involving getting authorization for the securities?

Mr. HUBBELL. What I said was that Mr. Massey was dealing with Mr. Latham. I don't know, because I don't have the bill for May 1985, what other work may have been done. I just don't know.

Mr. CHERTOFF. Now, again, and all this——

Mr. HUBBELL. I assume you all have it. I don't have it.

Mr. CHERTOFF. Ultimately this, of course,

Mr. Hubbell, all ties into the issue of whether the Rose Law Firm examination about the conflict of interest in 1992 and 1993 was going to become a big can of worms, as it is apparently becoming.

So let me just—to finish laying the groundwork here, you testified in response to Senator Bennett's questions that your understanding is maybe the higher bills where she's the principal working attorney or the principal attorney billing her time in 1986 relate to regulatory work.

Mr. Kendall said yesterday in the New York Times, and it is a quote, I mean—well, part of it is a quote, that Mrs. Clinton "had never worked on the sale to Mr. Ward," that's the one we have this invoice for where she's put her name on the bill, and that she did "limited work on Castle Grand involving a few narrow questions."

Now, you've indicated to us that IDC included Castle Grand, so between the stock offering in 1986 and IDC in 1986, in January she's billing $3,500. Can you help us out with that? Was that the limited amount of regulatory work?

Mr. HUBBELL. I don't know. I don't have the breakdown that I assume you all do that shows the time everybody worked.

Mr. CHERTOFF. Let me ask you this, Mr. Hubbell: Mrs. Clinton's specialty was as a litigator?

Mr. HUBBELL. She was in the litigation section.

Mr. CHERTOFF. She wasn't a commercial lawyer who would be involved actually typically in doing transactions?

Mr. HUBBELL. No, I mean, she might be called in on a specific matter, but she was generally a litigator.

Mr. CHERTOFF. Do you have any knowledge of any litigations that are listed in these billing summaries or this billing recap in 1986 that would explain what she was spending her time on, why she's billing on these matters?

Mr. HUBBELL. I don't know one way or the other.

Mr. CHERTOFF. In September 1993, you got a call from April Breslaw concerning the fact that the—I see my time is up.

The CHAIRMAN. Let me say, I think the Minority has been very fair to permit the time so that we could finish or explore, but let me turn to the Minority and ask them if they would like to pursue a line at this point in time.

Senator SARBANES. Mr. Chairman, I just have a couple.

I want to be clear on one thing. I have in front of me on this line of questioning that was being pursued, the recap of fees from Madison Guaranty to the Rose Law Firm, I take it. Do we have the billings that these fees represent? I mean, a lot of the questions have been directed at what did that cover and so forth. You don't have that in front of you?

Mr. HUBBELL. The only bill I have been given is document 90. I mean, there should be a bill, there should be behind that a computer printout that would show the time that each lawyer worked and the nature of that time. I don't have those so it's kind of difficult for me. I don't know. When they're saying recap of fees, I'm assuming that that's how much was allocated among the lawyers within our own internal bookkeeping system. It may not mean—I don't know what it means—I have to be honest. I don't know who prepared this. I have an assumption, and the assumption may be totally wrong.

Senator SARBANES. Well, what is this document, first?

Mr. CHERTOFF. This document was provided to us from the RTC. It was—as you can see from the Bates number—produced to the

RTC in response—when they were investigating this whole issue by the Rose Law Firm, prepared by the firm. I don't know that we yet have gotten our hands on the underlying bills.

The CHAIRMAN. I think there are two things that are evident and that should be pursued. Number one, we should ask the RTC whether or not they have the backup documentation as it relates to the actual bills that Mr. Hubbell speaks of, because he says without seeing that he may not be in a position or we are not in a position to answer fully, and that's understandable, so let's ask Counsels to see if they have that information.

Number two, and probably more difficult, would be to ascertain what kind of documentation the Rose Law Firm actually has, if any, at this time which would substantiate this. So we're going to ask Counsel to pursue that. Then we could be much more precise and we would be fairer to the witness as well.

Senator SARBANES. I was going to say, I think in all fairness to Mr. Hubbell, it puts him in a difficult position.

The CHAIRMAN. I agree. I think we have explored this particular line with the bills, given the fact that this is limited. This is a summary, but of course it does raise questions as it relates to the First Lady's statements and what would appear to be, at least from this—this is a recap, in fairness—an indication that there was more representation than maybe we were led to believe as it relates to Mrs. Clinton and Madison, but let's see if the RTC does—I'll ask Counsel to explore if they do have the underlying documents that formed the basis for this recap.

Senator SARBANES. Mr. Hubbell, when you identified that 15-minute conversation, was that subsequent to Mrs. Clinton having made a representation that she had not done any such work and you then said well, now, be careful, here is this 15-minute thing that I've found?

Mr. HUBBELL. I believe it was. I believe that the issue was being raised, we were scrambling to get out of closed files our files to see exactly what the involvement was, but I think she had already said—she didn't have any memory of ever being involved, and I think it was after at least one statement was made.

Senator SARBANES. You found this 15-minute involvement and said now, you know, there was this, which you obviously didn't remember in making your statement; is that correct?

Mr. HUBBELL. That's correct.

Senator SARBANES. How much would a partner ordinarily bill at the Rose Law Firm in a week? I guess it varied greatly, would it?

Mr. HUBBELL. It would vary between—a partner would bill clients between $100,000 and, maybe, half a million.

Senator SARBANES. In the course of a year?

Mr. HUBBELL. In the course of a year, depending on his partner, depending on his client base, and depending on the nature of the matter.

Senator SARBANES. Mr. Chertoff threw out a possibility, I didn't quite know any basis for it, that Mrs. Clinton was billing Madison at some sweetheart rate, as I understood his question to you. What is your reaction to that? Did you know anything of that sort?

Mr. HUBBELL. I don't know anything about a sweetheart rate, but I have a little bit of difficulty saying that a $2,000 a month re-

tainer was a major client or a major matter within the Rose Law Firm at that time or even certainly now. That's just not that big of a client. I mean $2,000 is a lot of money, Senator, it is to a lot of people, but at the same time in relation to the firm's fees, $2,000 a month was not a very big account.

Senator SARBANES. You don't know of any basis for an assertion that she was getting an inflated rate?

Mr. HUBBELL. Oh, no, absolutely not. I mean, she was meticulous in the way she billed. She's the one who sent the money back. She sent money back to Madison when that was over with.

Senator SARBANES. OK. Thank you.

Mr. CHERTOFF. Mr. Hubbell, you mentioned when she sent the money back. When did the firm decline or decide to pull out of its representation of Madison Guaranty?

Mr. HUBBELL. Well, I believe it was in approximately May 1986. I could be off a month or two.

Mr. CHERTOFF. Was that shortly before the bank examiners finally insisted that Mr. McDougal be tossed out of the bank?

Mr. HUBBELL. I believe Mr. McDougal was already out of the bank, but I may be wrong, by that time.

Mr. CHERTOFF. Was the decision to relinquish this account after a period of 18 months tied in any way either to the fact that Mr. McDougal was kicked out of the bank or with the anticipation that he was going to be kicked out of the bank?

Mr. HUBBELL. There were two major factors in stopping the retainer. One was that the work was being reduced. One thing you can tell from the bill is that it appears that our work was—we were doing less and less, very little work for Madison.

But more importantly is that other lawyers within the firm were doing more and more work for what was then the Federal Home Loan Bank Board. And the Federal Home Loan Bank Board was telling those partners that it was its position that we could not bid on additional work unless we could make representation that we had no regular representation of any S&L. So the firm made a decision to get out of representing savings and loans in order to be able to bid on that work.

Mr. CHERTOFF. When did you say you decided to get out of the Madison account?

Mr. HUBBELL. I may be wrong, but I believe it was in May or June 1986. Does that sound right?

Mr. CHERTOFF. Well, in May 1986, there were substantial billings, I mean——

Mr. HUBBELL. Maybe it was later. Mike, I don't—I'm terrible at dates. I don't have—there's a memo that I have been shown by the Special Prosecutor which memorializes when we got out, but I think it was in the summer of 1986, or we were getting out then. There is a memo on that.

Mr. CHERTOFF. Let me ask you this, Mr. Hubbell, although I think Senator Bennett has a question to follow up regarding the issue of this affidavit.

Senator BENNETT. We have a copy of the affidavit.

The CHAIRMAN. Can I ask my friend and colleague, could we provide a copy to Mr. Hubbell?

Senator BENNETT. Yes.

The CHAIRMAN. I think we should do that. Is there a copy for the Minority?

Senator BENNETT. Yes, I don't want to beat this into the ground. I want to be as complete as I can be.

The CHAIRMAN. Senator, could we just withhold for a moment. Can we have another copy made for the Minority?

Supposing we take just a 2-minute pause so that the copies can be made.

Senator BENNETT. I can ask another question while we do that.

The CHAIRMAN. Go ahead. Let me suggest that.

Senator BENNETT. All right. This is totally unrelated. I hate to do this to you and make you shift gears in the middle, but to save time, it's my understanding, Mr. Hubbell, that on October 25, 1993, Mr. Jim Lyons called you and said he had to talk to you about the Whitewater Development Corporation. And then on October 27, he called and left the following message: "Is meeting with Bruce Lindsey if you need to reach him. Suggests you take documents he needs to look at with you tomorrow when you meet Jack Quinn for lunch."

Mr. HUBBELL. Yes.

Senator BENNETT. Can you shed some light on that for us?

Mr. HUBBELL. Mr. Lyons had, during the campaign, prepared an analysis of Whitewater and also had provided other legal advice to the campaign. I was aware of that. I was in possession, I think I've told this Committee, of certain campaign files. Mr. Lyons called me to say that we were going to have lunch that day, I mean the next day with Mr. Quinn, would I bring those files with me to give them to him so he could help Mr. Lindsey with regard to press inquiries. And I did so.

Senator BENNETT. And the documents were in your basement or your home?

Mr. HUBBELL. Yes, they were in the basement of my home.

Senator BENNETT. They consisted of?

Mr. HUBBELL. My recollection, they were marked so I didn't go through them in depth, but they consisted of drafts of his, what was called the Lyons report, and other accounting information with regard to Whitewater.

Senator BENNETT. I see.

Mr. HUBBELL. I read this affidavit, Senator. I believe that it is totally consistent with what I told you before. Can I point that out to you?

Senator BENNETT. Sure.

Mr. HUBBELL. I believe—I am assuming—I haven't seen the signature page, but I am assuming this is an affidavit of Mrs. Clinton.

Senator BENNETT. Yes, it is.

Mr. HUBBELL. She says, "While I was the billing partner on this matter, the great bulk of the work was done by Mr. Massey who was then an associate at the Rose Law Firm and whose specialty was securities law." Prior to that, she said, "In the spring of 1985 Rose Law Firm was to represent Madison in an attempt to secure permission for the S&L to issue preferred stock and market it through a wholly-owned brokerage firm." She says, "I was not involved in the day-to-day work on the project which has a specific reference to the securities matter."

That is what I was trying to say, Senator, is that when she is saying, I believe, that she was not involved on a day-to-day basis, she was talking about the securities project, the securities work that the firm did for Madison. And that's, I must be just terribly inarticulate because that's what I'm trying to convey.

Senator BENNETT. Well, you are not inarticulate. I must be terribly inarticulate because I have been unable to convey to you my problem with this.

Mr. HUBBELL. All right. I'm trying to say that my understanding of the articles that I've read and what I've seen with regard to Mrs. Clinton's response regarding Madison was that with reference to the securities matter, her involvement was minor.

Senator BENNETT. All right. I will accept that and say, as a layman, my reaction to discovering for the first time this morning, I guess it is afternoon by now, the billing sheets, I find that statement misleading. I am not putting motives in anybody's minds. I am not saying it was deliberately misleading.

I have learned that that is the way lawyers talk sometimes. They are very specific and very precise, like the old story of two people driving along the street and they see a herd of sheep on the hill. The first one says I see the sheep are newly sheared, and the second person, who was a lawyer, says well, on this side at least.

So you are being very precise, and I am not criticizing you for that. But this is the sum and substance of where I am, and I will try to be as articulate as you've tried to be, the strong impression given to the public by Mrs. Clinton's press conference and buttressed by this affidavit is that her relationship with Madison was very peripheral. She had little or nothing to do with it and no involvement day to day.

The strong impression given to a layman, who has paid bills, looking at this recap of bills is that Mrs. Clinton was not just the billing partner, but very heavily involved in the day-to-day management of the Madison account for the law firm. If you wish to say well, it doesn't apply to the securities matter, and I accept that, will you come with me and say on other matters she was heavily involved in handling the Madison account for the Rose Law Firm?

Mr. HUBBELL. She was the billing partner clearly. That's one thing we do know. We don't have the bills themselves; what we do know, as well, is that if you look at even the breakdown of the bills, that she was not involved, hardly at all, in the securities matter.

What we don't know is what the bills actually reflect with the third matter which is the other matters that the firm billed Madison for, but there is an easy solution, Senator. That is, the Rose Firm and the RTC will have the bills.

The CHAIRMAN. I hope the Rose Firm has the bills. And I don't mean to be——

Senator BENNETT. I don't mean to pursue it any further, Mr. Chairman.

Mr. HUBBELL. Senator, can I respond about the Rose Firm? The Rose Firm had the bills when I left the firm in 1992, OK, because I saw them.

The CHAIRMAN. We will pursue that. We will try to ascertain if they still have those bills. I hope they have them and/or if the RTC has those bills, they very well might, I mean, they have a recap,

so where did they get the recap? Is it a recap that they provided us, do they have the actual bills? That is something that we will have to ascertain.

I will say this to you. We don't have the letter of April 30, but this is something that I am concerned with. Beverly Bassett's letter to Mrs. Clinton in which she says, "I have received your letter, 'your letter,' of April 30, 1985, regarding the proposed authorization of Madison to issue of a class of nonvoting preferred stock. I agree with your analysis and conclusion of the question, whether an Arkansas chartered savings and loan may, under Arkansas law, create, authorize, and issue a class of preferred stock."

Now, I mean this is addressed to Mrs. Clinton.

Mr. HUBBELL. Right.

The CHAIRMAN. It ends, "I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law."

Then when we get the recap in terms of the billing, it follows out thereafter, "It would appear that certainly there's more than a minor connection."

Now, I understand when the partner has a young associate, who performs the grunt work and associate type tasks for them, and the associate approaches them and the partner says this is what I recommend, and this is why I would do it, et cetera. If they go to that partner, and maybe we will have to call this young man in here and find out what, if anything, he recalls with respect to that.

You have been most gracious over here for permitting us to pursue. And I would now turn to Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I don't know what more there is to develop here. I think Mr. Hubbell has tried to answer it as best he can on the basis of the records that were put before him. I mean, he earlier was asked when did they stop representing Madison and he said May or June. And then he was caught up on that because there are these billings in May. Actually if you look at the billings, I guess, Mr. Hubbell, you got out a couple of months after that, from the looks of it; is that correct?

Mr. HUBBELL. That looks like it, but I just don't know because I don't have the bills, but my recollection was—and I do know that the RTC and the Special Prosecutor have a memo, where the firm is discussing getting out of representing savings and loans in order for us to bid for Federal Home Loan Bank work, because they've shown it to me. So I know the memo exists, and I know at least both the RTC and Special Prosecutor have a copy of that memo which is an internal firm memo that talks about it.

Senator SARBANES. Now, it was the firm's policy that the bills were sent by a partner, not by an associate; is that correct?

Mr. HUBBELL. That is correct. Especially in the securities area to make sure that a partner was supervising a securities associate, even though Mr. Massey was very bright.

Senator SARBANES. Would a partner send a bill and have it credited to the partner's name in the firm when a lot of the work might have been done by an associate?

Mr. HUBBELL. You are talking—we had at one time 35 partners in the firm who all billed differently, so I'd hate to say that there's any typical practice.

Mr. CHERTOFF. Let me direct your attention to 1993, by which time you are out of the Rose Law Firm and you're in Washington. Now, on September 29 you got a call from April Breslaw of the RTC; correct?

Mr. HUBBELL. That's correct.

Mr. CHERTOFF. What did she tell you?

Mr. HUBBELL. I believe she was telling me that there was an investigation of some sort—either she did or Rick Donovan had already told me, I'm not sure about that because I don't have my message slips. But Rick called me about the same time to say that there was an investigation about the conflict issue again.

And April said that she had no recollection that I had told her about the prior representation of the firm of Madison, and she wanted to raise that with me.

Mr. CHERTOFF. What was your response, did this ring a bell?

Mr. HUBBELL. Well, you know, I told her that my recollection was that it was a very brief, less-than-30-second conversation but that we had made that disclosure.

Mr. CHERTOFF. She calls you up and says she wants to find out your recollection about what happened?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Did she say why she wants that?

Mr. HUBBELL. Yes, she said there was an investigation regarding the conflict.

Mr. CHERTOFF. Did she suggest to you that she was conducting the investigation?

Mr. HUBBELL. She didn't suggest who was conducting the investigation, no.

Mr. CHERTOFF. Did she indicate to you that she was trying to get your recollection as part of conducting the investigation, or because she expected she was going to be asked about it?

Mr. HUBBELL. I think she had been asked about it. She was trying to find out what my recollection was of that conversation.

Mr. CHERTOFF. And was that the first you understood or was that conversation, or the conversation with Mr. Donovan, the first you understood that there was going to be an investigation about this conflict?

Mr. HUBBELL. Yes. One of the two about the conflict issue, yes.

Mr. CHERTOFF. Now, when you talked to Mr. Donovan about it, did you and Mr. Donovan make an effort to reconstruct what had happened so you could be prepared to meet this investigation?

Mr. HUBBELL. I did. I told Rick that we should have some letters in the file regarding the conflict. And I asked him if he would look for the letters regarding the conflict.

Mr. CHERTOFF. So as far as you know, the first notice that the firm got, either through you or through Mr. Donovan, that there was going to be an investigation about this was the call from April Breslaw?

Mr. HUBBELL. I really don't—I can't speak for the firm but my understanding was that April had called Rick, yes.

Mr. CHERTOFF. Did you become concerned about the fact that this was going to become a matter under investigation?

Mr. HUBBELL. Initially, no.

Mr. CHERTOFF. Did you sense, again initially, that there might be a potential embarrassment to the firm if there was an issue involving a conflict of interest?

Mr. HUBBELL. Initially, no, Mike. Obviously it grew.

Mr. CHERTOFF. Were you surprised to hear from April Breslaw that she would be the person who would be contacting you from the RTC?

Mr. HUBBELL. I think the impression I got from April was that she was trying to find out, you know, what my recollection was about those events.

Mr. CHERTOFF. When had you spoken to her previous to this conversation on September 29, when was the next earlier time you spoke to her?

Mr. HUBBELL. I think I saw April when I talked to the Professional Liability Section of the RTC in August 1993.

Mr. CHERTOFF. That was her section?

Mr. HUBBELL. That's her section.

Mr. CHERTOFF. Did she invite you to come down to talk?

Mr. HUBBELL. I thought it was, although when I look in my calendar, it looks like somebody else was the contact person, but I thought it was April. It could have been one of the other lawyers I worked with as well.

Mr. CHERTOFF. In the course of the meeting at this, with the RTC Professional Liabilities Section, did you indicate that, to some group of people there, that you knew Ms. Breslaw because you had a previous experience with her having been fee counsel?

Mr. HUBBELL. I don't know if I expressed that. I thought everybody knew it. There were several people there that I had worked with over several years, but April was certainly one of them.

Mr. CHERTOFF. In the course of the meeting at PLS, did you say in substance that if the RTC should receive demands for document production from a U.S. Attorney's Office which the RTC believes is unreasonable, the RTC should feel free to let you know?

Mr. HUBBELL. I saw that memo for the first time yesterday, Mike, I assume you are reading from a memo.

Mr. CHERTOFF. I'm reading from a Department of Justice E-mail from Mr. Carver.

Mr. HUBBELL. I don't know where it came from. I don't have any memory of that, but I'm not surprised that I would have said something like that.

Mr. CHERTOFF. Well, you were not, when you were Associate Attorney General, in the line of authority with the U.S. Attorneys; correct?

Mr. HUBBELL. The Executive Office of U.S. Attorneys did not report to me.

Mr. CHERTOFF. It reported to the Deputy?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Can you think of any reason why you would make an offer like that to the RTC in connection with helping them with document production?

Mr. HUBBELL. Absolutely.

Mr. CHERTOFF. What would be the reason?

Mr. HUBBELL. Mike, if you remember, at that time we were very understaffed at that point, at the Justice Department, plus the At-

torney General and me and Phil believed strongly in an openness policy. And it doesn't surprise me at all for me to say if you are having problems with Main Justice, give me a call. I mean, that's my style, and I don't see anything wrong with that.

Mr. CHERTOFF. When you say, first of all, there was an openness policy, are you meaning to say that everything involving criminal investigations, subpoenas, kind of let it all hang out?

Mr. HUBBELL. I'm trying to say if somebody is having a problem at the Justice—especially, as I read the memo, one of the contexts was that we didn't have at that point a nominee for Special Counsel for Financial Institution Fraud, that they would normally be working with a lot, that if they were having a problem to give me a call, and I would put them in touch with the right person.

We were new. We were the new people on the block. If they had a problem, I would put them in touch with the right people. I don't—as far as if the RTC had a problem with the U.S. Attorney that they couldn't work out, and they called me, I know what I would have done. It never happened, but I know what I would have done.

Mr. CHERTOFF. Now, after you spoke to Ms. Breslaw on December 29, you spoke to Bill Kennedy; correct?

Mr. HUBBELL. I probably talked to Bill Kennedy once a day.

Mr. CHERTOFF. You testified earlier, I think, that there was a point at which Mr. Kennedy told you about his conversation with Mr. Coleman; right?

Mr. HUBBELL. I believe I said that at some—early on he called me about Mr. Hale. I believe after that point, at some point, there was a newspaper article about Mr. Coleman trying to reach, talking to Mr. Kennedy, and then I had a conversation with Bill about it. That's my recollection of the events.

Mr. CHERTOFF. Was the conversation with Mr. Kennedy where you became aware of the reason he had spoken to Mr. Coleman where you finally learned that, was that before or after this call with April Breslaw?

Mr. HUBBELL. I have no idea.

Mr. CHERTOFF. Did you tell Mr. Kennedy, either that day or afterwards, you know, there's going to be an investigation of the Rose Law Firm involving this conflict of interest issue?

Mr. HUBBELL. I don't recall doing that.

Mr. CHERTOFF. Did you tell Mrs. Clinton?

Mr. HUBBELL. Oh, no.

Mr. CHERTOFF. No?

Mr. HUBBELL. No.

Mr. CHERTOFF. Let me ask you. I thought you were about to say a little earlier, in response to Senator Bennett's question, you started to say something about talking to or conversing with Mrs. Clinton; at least I thought you said that. So let me ask you straight out. Did you ever talk to Mrs. Clinton about her statements in the press concerning the amount of work she did for Madison?

Mr. HUBBELL. I recall, this is back in the campaign, and it seems to me it was around the New York primary, I may be wrong, but it seems to me it was around the New York primary that this issue came up.

Initially we were not able to talk to Mrs. Clinton directly because she was working until midnight, 1 or 2 a.m. at night and we told her staff for her to be careful. At some point, I believe I did tell Mrs. Clinton that there was at least one time entry where she had had a conversation with Beverly Bassett.

Mr. CHERTOFF. Oh, you actually found a specific time entry for a telephone conversation?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. How long was the conversation?

Mr. HUBBELL. Like I said a quarter of an hour, .25.

Senator SARBANES. Mr. Chertoff expressed some surprise, but I thought you testified to that earlier, didn't you, that telephone call?

Mr. HUBBELL. I thought I did.

Mr. CHERTOFF. Maybe I missed it.

Mr. HUBBELL. When you asked me the quarter of an hour, that's what I was talking about.

Senator SARBANES. No, I followed it up, but someone else had asked you previously. I mean, this is the same conversation we are talking about?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Now, other than this conversation where you told her, you said you told her to be careful because you had found this time entry.

Mr. HUBBELL. Right.

Mr. CHERTOFF. Did you have any further conversation with her about this whole issue?

Mr. HUBBELL. I can't say 100 percent no, but I am pretty close that the issue about her work for Madison coming up. There was an issue, we were trying to locate the records to verify that the money had been sent back. I don't know if I talked to Mrs. Clinton about that directly, but I might have.

But there were issues about her representation that came up. I don't remember any specifically. I am close to thinking I did, Mike, but I might have.

Mr. CHERTOFF. When the issue of the RTC conflict of interest investigation came up in September, you had no later conversation with Mrs. Clinton about that?

Mr. HUBBELL. I'm sorry. You're going to have to ask the question again——

Mr. CHERTOFF. After the issue of the RTC investigation of the Rose conflict of interest came up in September 1993, did you have any conversation with Mrs. Clinton about that investigation?

Mr. HUBBELL. Mrs. Clinton, no.

Mr. CHERTOFF. You never said to her they are looking at Rose, again, in substance?

Mr. HUBBELL. No.

Mr. CHERTOFF. Did you ever talk to her lawyers about it?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Who?

Mr. HUBBELL. Mr. Kendall.

Mr. CHERTOFF. When was that?

Mr. HUBBELL. When I had lunch with Mr. Kendall in November.

Mr. CHERTOFF. When in November? Was it November 5?

Mr. HUBBELL. No, no. I can look in my calendar and tell you.

Mr. CHERTOFF. Would you take a look.

Mr. HUBBELL. November 17, Mike.

Mr. CHERTOFF. Now, on November 5, which is a day we have established there was a meeting in Mr. Kendall's office involving a number of people, not yourself, there's a call at 7:55 in the morning from Mrs. Clinton to you. Do you know whether that was in connection with this upcoming meeting?

Mr. HUBBELL. I don't know.

Mr. CHERTOFF. What did she talk to you about on that day? Do you have any notion?

Mr. HUBBELL. Mike, I have no idea what she would have talked to me about.

Mr. CHERTOFF. On November 17, when you met with Mr. Kendall, at whose request was that, to talk about the Rose——

Mr. HUBBELL. That wasn't the purpose of the meeting, but it came up.

Mr. CHERTOFF. What was the purpose of the meeting?

Mr. HUBBELL. For me to meet with Mr. Kendall and make arrangements for the transfer of the documents I had to Mr. Kendall.

Mr. CHERTOFF. How did the subject of this conflict of interest inquiry come up on November 17? Did you bring it up?

Mr. HUBBELL. I don't know that I brought it up or he brought it up. I just know that we would have talked about the Rose Firm because I had a Rose Firm file with me at the time.

Mr. CHERTOFF. What was in the file?

Mr. HUBBELL. The file was the Rose Firm file with regard to the representation of Madison for the Arkansas Securities Department.

Mr. CHERTOFF. What was contained in the file, what kind of documents?

Mr. HUBBELL. Correspondence.

Mr. CHERTOFF. Were there billing records?

Mr. HUBBELL. I don't believe so. I believe at the firm, the billing records were kept in a separate file but it could have been. It was that file.

Mr. CHERTOFF. Was it a thick file?

Mr. HUBBELL. No.

Mr. CHERTOFF. Were there documents that Hillary Clinton had signed in the file?

Mr. HUBBELL. I don't remember Hillary signing anything in the file.

Mr. CHERTOFF. What did you do with the file?

Mr. HUBBELL. I gave it to Mr. Kendall.

Mr. CHERTOFF. Have you ever seen it again?

Mr. HUBBELL. No.

Mr. CHERTOFF. As far as you know, is it still in his possession?

Mr. HUBBELL. I don't believe it is.

Mr. CHERTOFF. Do you know where it is?

Mr. HUBBELL. I believe he returned it to the Rose Firm.

Mr. CHERTOFF. Do you know who has it now?

Mr. HUBBELL. No.

Mr. CHERTOFF. Now, do you know Diane Blair?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you work with her at all during the campaign or afterwards concerning Whitewater issues or issues relating to the Rose Law Firm?

Mr. HUBBELL. I worked with Diane during the campaign on Rose Firm issues. I don't remember doing so after the campaign.

Mr. CHERTOFF. What did you do with her during the campaign on those issues?

Mr. HUBBELL. Diane was one of the people who worked with Betsy Wright in dealing with media and issues involving Arkansas. And Diane might be the one who called me to say we have an inquiry from Mr. Gerth, or I might say I have gotten a call from Mr. Gerth, and I use that as only one example, to let the campaign know that the firm was getting press inquiries about a myriad of issues, not just Madison.

Mr. CHERTOFF. Diane Blair is Jim Blair's wife?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. How long have you known her?

Mr. HUBBELL. Gee——

Mr. CHERTOFF. I beg your pardon.

Mr. HUBBELL. I don't know how long I've known her. I've known her for a while.

Mr. CHERTOFF. How long has she known the Clintons, to your knowledge?

Mr. HUBBELL. I think since the Clintons were professors at the University of Arkansas, which was over 20 years ago.

Mr. CHERTOFF. Did you have an occasion to see Jim Blair and Diane Blair in Washington after you came to Washington as an associate?

Mr. HUBBELL. Yes.

Mr. CHERTOFF. Did you see them frequently?

Mr. HUBBELL. Not frequently, no.

Mr. CHERTOFF. Do you know whether either of them was frequently in the White House?

Mr. HUBBELL. I know on a couple of occasions I saw them there. I can't tell you how often they were there.

Mr. CHERTOFF. Do you know whether either of them had any involvement, after you came to the White House, with handling the Whitewater or Madison issues, as they became public issues?

Mr. HUBBELL. I don't know. I would be surprised if Jim was not involved, but I don't know that.

Mr. CHERTOFF. You would be surprised if he was not involved?

Mr. HUBBELL. Right.

Mr. CHERTOFF. Why do you say that?

Mr. HUBBELL. Because Jim was the one who was supposed to be negotiating with Mr. McDougal about the transfer of the Whitewater interest the Clintons had back to Mr. McDougal.

Mr. CHERTOFF. Now, other than the meeting you have described with Mr. Kendall on the 17th of November in which you discussed to some degree the issues of the Rose Firm and the transfer of files, did you have other meetings with the Clintons' private attorneys in connection with their private legal issues between the summer of 1993 and the end of the year?

Mr. HUBBELL. I met with Mr. Barnett in August, I believe.

Mr. CHERTOFF. What was that about?

Mr. HUBBELL. It was right after Vince's death, and I was trying to identify someone who was going to be the Clintons' counsel, to get the records to that person. I met with Mr. Barnett about that, and at that point we were hoping that Mr. Barnett would be the one to deliver the files to.

Mr. CHERTOFF. Wait a second. You had a conversation with Mr. Barnett to determine where the records would go?

Mr. HUBBELL. Right.

Mr. CHERTOFF. You are talking about the records in Mr. Foster's office?

Mr. HUBBELL. No.

Mr. CHERTOFF. Which records?

Mr. HUBBELL. The records that were in my basement.

Mr. CHERTOFF. I see. And the reason for moving those or having this discussion was connected how to Mr. Foster's death?

Mr. HUBBELL. Mr. Foster and I had been talking about getting the files to a private counsel, or to some secure storage here in Washington. After Vince's death, I didn't have anyone to talk to about this issue. A person named Mike Berman, who was assisting the Clintons in some personal matters, introduced me to Mr. Barnett. I had met Mr. Barnett but I did not know that he was their personal counsel until that point.

Mr. CHERTOFF. Did he agree to take these records from you?

Mr. HUBBELL. I believe he told me that because of a conflict, that was either developing or had developed he could not, he was going to have to no longer be their personal counsel, but that he was hoping the Clintons were going to hire Mr. Kendall, and that as soon as that had taken place that we would arrange for the transfer.

Mr. CHERTOFF. OK. Other than that meeting and the meeting you have described of November 17, did you have other conversations with the Clintons' personal attorneys relating to their personal legal work?

Mr. HUBBELL. How far back——

Mr. CHERTOFF. From the summer of 1993 until the end of the year.

Mr. HUBBELL. The summer of 1993, I met with Mr. Barnett and Mr. Berman. I may have had a phone conversation or two with Mr. Barnett. I just don't know. I met with Mr. Kendall and Mr. Barnett. Then Mr. Kendall came to my house that weekend and got the rest of the files. On an airplane, coming back from Arkansas in January 1994, I had a brief conversation with Mr. Barnett.

Mr. CHERTOFF. Let me ask you finally to turn to one last issue in connection with these documents. You talked about, I guess, Betsy Wright had originally furnished you with the documents. Were you in contact with her during 1993 regarding the handling of the documents or other issues emerging from campaign questions about Whitewater or the Rose Law Firm, or things of that sort?

Mr. HUBBELL. I was in contact with Betsy but not on issues regarding Whitewater.

Mr. CHERTOFF. Do you know Jack Palladino?

Mr. HUBBELL. Yes I do.

Mr. CHERTOFF. Did she give you Mr. Palladino's phone number?

Mr. HUBBELL. I wouldn't be surprised if she did.

Mr. CHERTOFF. Who is Mr. Palladino?

Mr. HUBBELL. He is an attorney and private investigator who worked for the campaign.

Mr. CHERTOFF. Is he a practicing attorney, or is he basically a private investigator?

Mr. HUBBELL. I have never met Mr. Palladino, so I don't know.

Mr. CHERTOFF. In what capacity was he working for the campaign?

Mr. HUBBELL. Mike, I don't know. My understanding was that he was an attorney and a private investigator.

Mr. CHERTOFF. Why did you want his phone number?

Mr. HUBBELL. There are two possibilities that I recall. One would be that someone who had worked with him during the campaign, Betsy had given him as a reference for that person. Second, was that, in June 1993, an issue came up about some of the work Mr. Palladino had done with regard to the genealogy of Mr. Clinton, President Clinton, and I may have wanted Mr. Palladino's number to call him about that matter.

A third possibility, some reason I think of this, is when I started accumulating the files, I might have wanted to call Mr. Palladino to tell him to—if he had any files to get those files to Mr. Kendall as well.

Mr. CHERTOFF. Let me see if I can help you remember a little bit. The message that's left for you on June 23 at 2:50 p.m. says the name and number she promised you is Jack Palladino and then there's a number. There's a suggestion there that she had promised you a particular name and a particular number. Were you looking for a private investigator to do some private investigation work?

Mr. HUBBELL. No, Mr. Palladino had done some work with regard to the genealogy, the way I put it, is that it was around Father's Day and a man had come forward to say he was a half brother of the President. I believe during the campaign Mr. Palladino had done some work to determine if that was indeed true or not true by tracing the genealogy of President Clinton. So in connection with that, Betsy may have given me the number.

At the same time, Mike, a woman who had worked on the campaign and had worked with Mr. Palladino extensively was applying for a job in my office, and Betsy had called to recommend her, said that I should hire her and had given Mr. Palladino as a reference. So that is one of the two reasons I might have called Mr. Palladino in June. In June there would have been nothing about Madison or Whitewater.

Mr. CHERTOFF. Let me finally ask you this. You indicated you did see some kind of a report about the Hale matter—I'm sorry, the referral on Madison at the Department of Justice. Do you remember when that was?

Mr. HUBBELL. I can't give you a specific date. It was in the August, September range of 1993. I believe it was in late September 1993, but I don't know the exact day.

Mr. CHERTOFF. The only memo—I can tell you the only memo we have gotten from the Department that relates to this, before October 28, and there is one on October 28 is a memo of February 9 which I think you have been shown regarding the recusal, a recommendation or addressing the recusal of Mr. Banks, and it was

directed to Stuart Gerson who was then the Acting Attorney General.

Mr. HUBBELL. Mike, can you wait 1 second and let me pull that.

Mr. CHERTOFF. Absolutely. Take your time.

Have you seen this?

Mr. HUBBELL. In this form, I don't believe I've seen this.

Mr. CHERTOFF. When did you see it in some other form?

Mr. HUBBELL. When I appeared before the Grand Jury.

Mr. CHERTOFF. Did you ever see this document or a document like this in February?

Mr. HUBBELL. No.

Mr. CHERTOFF. Am I correct that in February you were at the Department?

Mr. HUBBELL. Yes, I was.

Mr. CHERTOFF. You were not at that point the Associate Attorney General?

Mr. HUBBELL. No, I was not.

Mr. CHERTOFF. You were essentially the Assistant to the then Acting Attorney General Mr. Gerson, who was a holdover?

Mr. HUBBELL. That's correct.

The CHAIRMAN. Can I ask you to spend—you have it? OK. Continue.

Mr. CHERTOFF. That finishes for me, Mr. Chairman.

The CHAIRMAN. I'm just going to get to one thing, Mr. Hubbell. You are aware now that the Federal Home Bank Board gave what I would consider to be a scathing denunciation of the operation of Madison, are you aware of that?

Mr. HUBBELL. I'm not surprised.

The CHAIRMAN. Have you seen that at all?

Mr. HUBBELL. I saw some exam reports in 1984 and 1985. I was given yesterday afternoon. This one in 1986——

The CHAIRMAN. So you saw the 1986 one, do you have a copy of the 1986 one?

Mr. HUBBELL. I was given it yesterday afternoon, yes.

The CHAIRMAN. Could you flip over to May 8, 016323. I am going to ask if they can help you. "Description and activity," I am going to ask you to read that.

Mr. HUBBELL. I did last night if that would speed things up.

The CHAIRMAN. "Land at Castle Grand was involved in a series of flips and fictitious sales by members of the McDougal/Hanley group." Then it goes on to say that these things are more fully described later on. Next paragraph, "The land which became Castle Grand was previously owned by IDC," Industrial Development Company of Little Rock. That is what you were speaking about before.

Mr. HUBBELL. That's correct.

The CHAIRMAN. Let's go over to the next page, and trying to save some time, second paragraph, "Ward apparently warehoused this land to reduce Madison's financial investment and the attendant borrowing from Madison Guaranty." You have come to realize that, is that accurate?

Mr. HUBBELL. I recognize that that is the position that the Federal Home Loan Bank Board took, yes.

The CHAIRMAN. Is that an accurate statement?

Mr. HUBBELL. Senator, there was litigation over this very transaction where an Arkansas jury found the opposite, so I know that that's what the position of the Government is. Now, whether it's true——

The CHAIRMAN. Warehousing of property through a person who was not held liable for any failure to pay off the loan, that certainly breaks all of the regulatory provisions if not criminal laws; isn't that true?

Mr. HUBBELL. I am not a regulatory lawyer, I do not know, Senator. I know there is a different viewpoint that was articulated in litigation in Arkansas. I am not trying to say whether it was or wasn't, but I am just trying to tell you that there is a second viewpoint on that. But it doesn't really matter.

The CHAIRMAN. I will conclude by reading the last sentence. "Thereby, using this circuitous route, additional Madison Guaranty investments in Madison Financial was disguised as a loan to Ward."

What troubles me is that here we have the Rose Law Firm billing in January 1986, and that's when this took place, and I look at the January 30 letter bill for $4,670. I look at the one letter and I look over at the billing for the month, and there I see Madison Guaranty stock offering and IDC. As you pointed out, you believe most of that took place as the IDC. And I see Mrs. Clinton there. I mean, I see an awful lot of work being done. I have to tell you, I am troubled by the fact that the law firm would have engaged in this kind of activity. I just have to tell you that.

Mr. HUBBELL. I understand your position, Senator.

The CHAIRMAN. All right. I just wanted to share that with you. We have no further questions for this witness.

Do you have any questions?

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. A couple. Thank you very much, Mr. Chairman. Mr. Hubbell, welcome back.

Mr. Hubbell, I just wanted to ask you a couple questions about a meeting on October 6. According to a news report, if you go back to The Washington Times, that's when Governor Jim Guy Tucker was in Washington, basically unannounced, to meet with President Clinton in the Oval Office. This comes 2 days after Bruce Lindsey had told the President about the Madison referrals naming Governor Tucker, and also naming Bill and Hillary Clinton as possible witnesses in this. Were you at that meeting at all?

Mr. HUBBELL. No, I was not.

Senator GRAMS. Did you have an opportunity to speak with the President after the meeting to ascertain what the meeting was all about or what was talked about?

Mr. HUBBELL. No, I did not.

Senator GRAMS. So you don't know what——

Mr. HUBBELL. I have no idea what was discussed. I know that he was there that day, but that was it.

Senator GRAMS. The story also went on to state that Governor Tucker met with you. Did you, in fact, meet with Governor Tucker while he was in Washington the week of October 6?

Mr. HUBBELL. No, I did not.

Senator GRAMS. Did you at any time discuss with Governor Tucker, either in person or by phone, any of the circumstances surrounding maybe Madison Guaranty, David Hale, the SBA problems being detailed in these referrals?

Mr. HUBBELL. I have had no discussions with Governor Tucker about any of those transactions.

Senator GRAMS. Let's move to another date, just about a month later, on November 5. This was the same day that U.S. Attorney Paula Casey recused herself from the Madison case. There was a meeting that afternoon at the office of Mr. Kendall. Did you attend that meeting at Mr. Kendall's office?

Mr. HUBBELL. No, I did not.

Senator GRAMS. So you have no idea, then, what went on, in that meeting at all?

Mr. HUBBELL. No.

Senator GRAMS. Just one final thought. I will go back to the October 6 meeting when Governor Tucker was in town. You did not meet with him or with the President at that time, but you did say or have testified that you received a call from Bruce Lindsey on October 6?

Mr. HUBBELL. I believe I met with Bruce that day.

Senator GRAMS. The purpose of the meeting was to—Bruce at that time I think had been appointed or was pointed out as being the point person to talk to the press about any Whitewater questions?

Mr. HUBBELL. At some point I know that was true.

Senator GRAMS. The meeting that you had or the phone call with him that day on October 6 was in effect to talk about files of Whitewater?

Mr. HUBBELL. No.

Senator GRAMS. What was that meeting in relation to?

Mr. HUBBELL. About appointments. Mr. Lindsey was still the head of personnel at that time and I was under extreme pressure to move appointments at the Justice Department. So I had asked Mr. Nussbaum to set up a meeting with Mr. Lindsey to see if we could get some of those appointments moved.

Senator GRAMS. I guess my concern was or the speculation is, I mean, you put a lot of these events together 2 days before there's the referrals. Mr. Lindsey is in contact with the President. Governor Tucker makes an unexpected visit to Washington, DC, pays a visit to Mr. Clinton at the Oval Office. You also have a meeting that same day with Mr. Lindsey. But you are saying that none of these events correspond with any of the referrals of Madison Guaranty——

Mr. HUBBELL. As far as I'm concerned.

Senator GRAMS. —that you were involved with.

Mr. HUBBELL. I was involved with meeting with Bruce and Bernie about appointments which were very critical to the Attorney General at that time. I was at the White House that day, I do remember Mr. Lindsey saying by the way, Jim Guy is there if you want to say hi, but I never talked to him that day.

Senator GRAMS. Again, I think this is some of the concerns that we have had. It all seems so coincidental that a lot of these things happen and go about, but there was no mention in the meeting

with Mr. Lindsey about maybe potential files you still had on Whitewater or relaying any information about a meeting that Governor Tucker had with Mr. Clinton.

Mr. HUBBELL. There was nothing about the meeting.

I am not sure when I might have said to Bruce that I still have the files in my basement and that I am supposed to be getting with Barnett to get those files to Bob or his designee. I probably said that a lot, just that we need to get a counsel for the President in place so I can deliver the files.

I could have said that on that day. I didn't say I didn't say it, but those were files in my basement that had really nothing to do with, I think, what this Committee is after.

Senator GRAMS. Thank you, Mr. Chairman. No further questions.

The CHAIRMAN. Thank you. We have no further questions.

Senator Sarbanes.

Senator SARBANES. Let's take a 5-minute or 10-minute break and keep on going.

The CHAIRMAN. We are going to take a 10-minute break at which time we will then start with U.S. Attorney Paula Casey.

Thank you, Mr. Hubbell.

[Recess.]

The CHAIRMAN. The Committee will come to order and at this time we will ask our witnesses if they would stand for the purposes of taking the oath.

[Whereupon, Paula Casey, Michael Johnson, and Fletcher Jackson were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. We will start Ms. Casey, Mr. Jackson, and Mr. Johnson with any statements that you would wish to give to the Committee.

Ms. Casey.

SWORN TESTIMONY OF PAULA J. CASEY, U.S. ATTORNEY EASTERN DISTRICT OF ARKANSAS

Ms. CASEY. Thank you, Mr. Chairman, Senator Sarbanes, Senator Hatch, and Members of the Committee. I appreciate the opportunity that you have afforded me to publicly answer the numerous questions that have been raised about my involvement in the matters that are under investigation by your Committee.

I am here to state uncategorically that neither I nor any member of the staff of the U.S. Attorney's Office for the Eastern District of Arkansas took any action that was intended to obstruct, impede, delay, or hinder any of the matters that are under investigation by your Committee.

Although this is not in my prepared statement that you received, I would also like to tell you thank you for accommodating my schedule. As you know, I am in the midst of a lengthy criminal RICO trial, that involves arson, insurance fraud, drug distribution, and murder for hire. I also appreciate the efforts that Judge Howard, his staff, and the defense lawyers took to accommodate my appearance here.

As the Members of this Committee know, but the public may not, a U.S. Attorney is appointed by the President on the recommendation of the Senior Congressional Member of the President's party.

I was recommended to the President for appointment as the U.S. Attorney for the Eastern District of Arkansas by U.S. Senator Dale Bumpers. I was Senator Bumpers's Legislative Director and Chief Counsel for 3 years from 1990 until the end of 1992. I was pleased that Senator Bumpers demonstrated his confidence in my ability by recommending me for this position.

I discussed the position of U.S. Attorney with Senator Bumpers on several occasions beginning in November 1992, but I never discussed the possibility of my nomination with any member or with anyone connected to the Clinton for President campaign or with anyone who was employed at the White House.

The former U.S. Attorney for the Eastern District of Arkansas, Chuck Banks, announced his resignation in January 1993, and he actually left office at the beginning of March 1993. The Attorney General, by statutory authority, then appointed Richard Pence, a career Assistant U.S. Attorney, as the interim U.S. Attorney for the Eastern District.

In early August 1993, President Clinton announced my nomination. I began working in the position on August 16, after the Chief Judge for the Eastern District issued an order for a judicial appointment. The U.S. Senate confirmed my nomination on September 22. During my first 2 weeks as U.S. Attorney, I visited with each of the assistants in the office in an effort to assess the nature of the cases and the matters then pending, and to get their input on my selection of a First Assistant/Criminal Chief. The previous First Assistant, Mac Dodson, had left with U.S. Attorney Banks to form a private law firm in March 1993, and there had been no First Assistant or Criminal Chief in the office since that time.

On September 2, 1993, I asked Michael Johnson to be the First Assistant/Criminal Chief for the District. Michael started working for the Department of Justice in 1973, in the Honors Program. He became an Assistant U.S. Attorney in the Eastern District of Arkansas in 1984. I selected him as First Assistant because of his extensive criminal experience and his knowledge of the Department of Justice and its policies. He was and is well respected by the courts, by law enforcement, and by his colleagues. I trust him and I rely on his advice. Michael accepted the position as the First Assistant and assumed his duties on September 7, 1993.

I would like to address the matter of David Hale.

When I became the U.S. Attorney, the investigation of David Hale and certain matters involving the Small Business Administration were already under investigation by the FBI and the U.S. Attorney's Office. The matter was assigned to Assistant U.S. Attorney Fletcher Jackson. When I first discussed the Hale matter with Mr. Fletcher in August 1993, he advised me that his investigation of the SBA fraud was essentially complete, and that he planned to present the matter for indictment during the September Grand Jury session. I did not attempt to change the prosecution plans nor to reassign the Hale matter.

Fletcher also told me that he was continuing to investigate other matters involving David Hale, and that the investigation might lead to matters involving Madison Guaranty Savings & Loan. I took no action to impede or to slow his investigation.

Randy Coleman, who represented David Hale, called and made an appointment to visit with me on September 7, 1993. My meeting with Mr. Coleman was brief for two reasons. First, he had injured himself the day before playing golf and he appeared to be experiencing a great deal of discomfort. Second, his only request on behalf of his client was one which a reasonable prosecutor would not grant. Mr. Coleman asked that Mr. Hale be granted immunity or charged with a misdemeanor in exchange for cooperating with the Government.

While I was willing to assess Hale's value as a cooperating witness, I felt and I still feel that allowing Hale to plead to anything less than a felony was wrong. The case involved substantial fraud on a Government agency funded by taxpayer money. The defendant was an elected public servant and a licensed attorney. Had I entered into an agreement to give Hale immunity or allowed him to plead to a misdemeanor, I would have been justifiably criticized.

Coleman insinuated that Hale could give information about people who were too big for me to prosecute, although he never provided specific information about any person or any wrongdoing. I offered to arrange for Hale to proffer his evidence to Federal agents under a grant of use immunity so that its usefulness could be evaluated. This is a standard procedure in my office, and I believe it is a standard procedure in most U.S. Attorneys' Offices. I also told Coleman that if Hale cooperated, the Government would request a reduction in Hale's sentence.

During the next 2 weeks, there was a series of letters exchanged by Coleman, First Assistant Michael Johnson, and me. In my letters, I attempted to reflect accurately what was occurring with regard to the Hale matter and the negotiations with Randy Coleman.

In one of his letters, Coleman suggested that my office should recuse from prosecution of his client. There was no conflict of interest in my office's prosecution of David Hale. And since Hale refused to proffer whatever information he had, I had no basis for recusal. The only basis for recusal that Randy Coleman ever articulated was that Hale might cooperate against other people. Hale's refusal to tell us what he knew, meant that no one could evaluate its truth, its value, or its impact on his prosecution. A recusal at that point was premature.

In the absence of any good faith attempt by Hale to proffer his information, he was indicted by a Federal Grand Jury sitting in the Eastern District of Arkansas on September 23, 1993. During this period of time, the Criminal Division of the Department of Justice in Washington, DC was informed of our plan to indict Hale and agreed.

On October 21, 1993, Mr. Coleman came to my office again to discuss a plea arrangement. The proposed plea arrangement required, among other things, that Hale plead to a felony and that he proffer his information to a Federal agent. The deadline for accepting the proposal was November 8. Coleman called me on November 8 to accept the proposal, if the Government would agree to some additional terms.

By that time I had recused. And I simply gave the information to Don Mackay, an employee of the Department of Justice in the

Fraud Section of the Criminal Division who was assigned to prosecute the case.

I have been widely criticized for refusing to negotiate a plea with David Hale. The truth is that I was willing and I did negotiate with Hale's attorney. What I refused to do was offer immunity or a misdemeanor to Hale because his conduct merited a greater punishment. Hale eventually entered a guilty plea, not to one felony as I had offered, but to two felony counts as a result of a plea agreement with the Independent Counsel.

I would like to address the matter of the first RTC referral. It was not until I visited with Fletcher Jackson sometime during my first 2 weeks in office that I learned of the first referral from the RTC that was made in 1992. While advising me about the Hale matter, Fletcher told me about the earlier referral and that it was not an active matter in the office.

He told me, however, that the Hale investigation might lead to matters involving Madison Guaranty. He also told me that the RTC would be making additional referrals involving Madison Guaranty, and that he had expected the referrals to be received in the office by the end of July. The referrals had not arrived at the end of July, however, and at the time Fletcher and I visited, he expected them to arrive at the end of August.

Sometime after talking with Fletcher, I read the first referral. I took no action with regard to that referral at that time and did not believe that any action was required. My understanding was that the matter was closed and did not—and it did not occur to me that the RTC had not been informed of the status of the referral.

Sometime between late August and the end of September, someone from the Executive Office for U.S. Attorneys, which is the office that provides administrative support for U.S. Attorney's Offices, contacted me. The Executive Office employee had been receiving telephone calls from Jean Lewis, the RTC investigator, who was trying to find out what had happened to the 1992 referral. I told the Executive Office employee that it was my understanding that nothing was happening with that referral, that it was closed.

Around mid-to-late October, the Executive Office for U.S. Attorneys asked that I advise Ms. Lewis of the status of the referral, and so in late October, I sent Ms. Lewis a letter. I viewed that letter as a housekeeping matter; that letter, the declination had no impact on the ongoing investigation of David Hale or any matter relating to Madison Guaranty. Under Michael Johnson's supervision, my office and the FBI had already begun an investigation to assess a number of matters involving Madison Guaranty, and the RTC was aware of that investigation.

In August 1993, when I first learned from Fletcher Jackson the names of certain people that he thought could be involved in the Madison Guaranty investigation, I knew that I would recuse if certain of those people were named in the expected RTC referrals, or if any tangible information was developed about them.

And on September 24, 1993, in a meeting with the FBI agent assigned to the Madison Guaranty investigation and his supervisor, along with the assistant special agent in charge of the FBI in Arkansas, and others, I stated that I would recuse if certain people were named in the investigation.

There were some officials of the Department of Justice who suggested that I should recuse in September 1993 prior to the Hale indictment. I believed that a recusal in the Hale matter at that point was premature. I was concerned that a recusal at such an early stage in a situation where the defendant was refusing to provide any information might lead other defendants to attempt to force my office to recuse without having to state their reasons.

The 1993 RTC referrals were eventually received by my office in mid-to-late October. And after reviewing them, I believed I had to recuse from the investigation from some or all of them. Michael Johnson, however, told me that he wanted to work with the FBI to assess the referrals before a recusal request was made, and he asked that he be allowed to do so. I agreed. But because we viewed the matter differently, I thought I should seek advice from other officials of the Department.

I was scheduled to travel to Annapolis, Maryland, for an orientation session for new U.S. Attorneys on November 1. I decided that I would wait until my orientation session and find someone in the Department to discuss the matter with, and then make a decision.

Shortly after arriving at the orientation session, I was asked to attend a meeting in Deputy Attorney General Phil Heymann's office on Wednesday, November 3. There were a number of other Justice Department employees present at the meeting, and we discussed the 1993 referrals. The general consensus of the group was that I should recuse.

I did not agree at the meeting to recuse because I felt an obligation to talk with Michael first. I returned to Annapolis after Wednesday's meeting. And following a telephone conversation with Michael on Thursday or Friday of that week, I delivered a recusal letter to Mr. Heymann's office on Friday, November 5.

Let me be clear. No action was taken by me or any employee of the U.S. Attorney's Office in the Eastern District of Arkansas to obstruct the investigation of any of the RTC referrals during the few weeks that they were in my office. In fact, in an effort to assess the nature and the strength of the evidence, Michael issued several Grand Jury subpoenas at the request of the FBI agent assigned to the investigation. Every action that I took was intended to promote the investigation of the matter, including my subsequent complete cooperation with Don Mackay and the Office of the Independent Counsel.

There have been numerous stories that referred to documented phone calls between Webb Hubbell and me during the fall of 1993. Any document that purports to show that such phone calls is a fabrication. And I had been assured by the FBI and by the Office of the Independent Counsel that no such documents exist.

I never spoke to Webb Hubbell on the telephone in the fall of 1993 or at any other time. The first and only time I ever recall speaking with Webb Hubbell was in January 1994 at the U.S. Attorneys conference, almost 3 months after my recusal. We did not and have never discussed the matters under investigation by this Committee.

No one from the Clinton Administration, including President and Mrs. Clinton, ever attempted to discuss the matters under investigation with me. I have never discussed these matters with any

No attempt was made to influence my office's investigation nor its outcome.

There have been many times in the past 2½ years when I wanted to answer the questions that were raised in the press and I wanted to defend myself and my staff. But I have remained silent because that was the only professionally appropriate response in view of the Independent Counsel's ongoing investigation. That silence has been misinterpreted by some as an admission that I did something wrong. I am pleased that the day has finally come when I can speak publicly. I thank you.

The CHAIRMAN. Thank you, Ms. Casey.

Mr. Johnson, do you have a statement?

SWORN TESTIMONY OF MICHAEL JOHNSON, ATTORNEY U.S. DEPARTMENT OF JUSTICE

Mr. JOHNSON. Yes, thank you, Mr. Chairman.

Mr. Chairman, Senator Sarbanes, and Members of the Committee, I'm here today to share the full extent of my knowledge regarding the matters under investigation by this Committee. I appreciate the opportunity to do so publicly for the first time since the events that led to this moment began more than 2 years ago.

I'm aware from the many times that I have been interviewed or deposed about this matter, and from having seen or heard about portions of public testimony before either this Committee or the Committee in the House of Representatives that one of the focal points is whether the U.S. Attorney's Office in Little Rock, Arkansas acted in any manner to delay, control, or obstruct the criminal investigation of Madison Guaranty or related matters now being conducted by the Independent Counsel.

I want to be heard loudly and unequivocally. To my knowledge no one associated with the Department of Justice, the White House, the Federal Bureau of Investigation, or any other Federal agency, ever attempted to delay, control, or obstruct the investigation being conducted by our office. No one ever asked me to do so or intimated to me that I should do so. No one.

Before discussing the specifics of my involvement I want to share some of my background with the Committee.

I was hired by the Department of Justice under its Honors Program and joined the Department on October 15, 1973. My first assignment was in Washington, DC with the Voting and Public Accommodations Section of the Civil Rights Division. I was recruited by and joined the Criminal Section of the Civil Rights Division in January 1976. I remained with the Civil Rights Division until 1984.

During my 11 years with the Civil Rights Division, I handled numerous high-profile investigations and prosecutions. I often dealt with the circumstances of using an accomplice as a witness.

I joined the staff of the U.S. Attorney's Office in Little Rock, Arkansas in January 1984, after being recruited for the position by George Proctor, who was the U.S. Attorney from 1979 until 1987.

I have worked almost exclusively in criminal law for the last 19 years. I have received numerous awards from the Department of Justice and other agencies for that work. In November 1984, I was appointed Senior Litigation Counsel for the U.S. Department of

Justice. I was one of only 34 Senior Litigation Counsels for the Department in the country.

During my time with the U.S. Attorney's Office, I have continued to be the chief prosecutor on many high-profile and complicated investigations and prosecutions. I have covered most of the gamut in both violent crime and white collar crime. I have worked on numerous cases concerning fraud related to financial institutions and numerous cases involving prosecution of public officials. I have also helped design and teach courses for the Department of Justice, including courses regarding complicated fraud investigations and prosecutions.

When Paula Casey arrived at the U.S. Attorney's Office on August 16, 1993, she and I were passing acquaintances. I recall only one specific occasion when I had actually met her. That was in either 1986 or 1987 when I was briefly introduced to her.

Ms. Casey spent the first couple of weeks in the office getting oriented, and among other things, putting together a management team. She told me on Thursday, September 2, 1993, of my selection as First Assistant. I assumed that position on September 7, 1993, the Tuesday following Labor Day.

With regard to the investigations, in this opening statement, I will not attempt to deal with every matter with which I dealt regarding the investigation of David Hale for fraud against the Small Business Administration or the investigation of fraud regarding Madison Guaranty Savings & Loan. If I attempted to do so, this opening statement would be too lengthy.

The most important item I want to be sure the Committee understands is this: From the time I became involved in the Hale and Madison Guaranty investigations shortly after September 7, 1993, I was responsible for the day-to-day management of those matters. Every decision regarding what was to be done and how it was to be done was either a decision I made, or one which I advised Ms. Casey to make. I was permitted to do everything I thought was in the best interest of the investigation, and given the leeway, not to do any of the things that I did not think would effectively promote the investigation.

In making those decisions, I relied on my 22 years' experience with the Department of Justice, input from the FBI agents investigating the matter, and input from Assistant U.S. Attorney Fletcher Jackson to whom the matter was assigned.

I believe the decisions I made were solid and well-founded, and I stand by them. Whether they are subject to criticism now by this Committee, the media, or the public, aided by the benefit of 2 years of hindsight, the decisions I made had one purpose, to effectively and fully investigate and prosecute any and all substantive matters that merited prosecution regardless of who was involved.

That is the duty to which I took an oath on October 15, 1973, when I joined the Department of Justice. It is the duty which I strive to fulfill every day of my career.

With regard to the matter of Judge David Hale, I know that a series of letters exchanged between Hale's attorney, Randy Coleman, and the U.S. Attorney's Office have been made available to the Committee.

The place to start regarding David Hale is to make this observation: The U.S. Attorney's Office offered Mr. Hale a plea agreement which would have required him to plead guilty to a single felony. He rejected that and insisted on receiving immunity, or at most, pleading to a misdemeanor offense. This issue was ultimately resolved between Mr. Hale and the Independent Counsel's Office when Mr. Hale pled guilty to two felony offenses, not one.

With regard to the negotiations between Mr. Hale's attorney and the U.S. Attorney's Office, it was my professional view then, and it is my professional view now, that during September 1993, Mr. Coleman was not negotiating with the U.S. Attorney's Office in good faith. Based on my experience, Mr. Coleman was manipulating public perception, in part through the news media, in an effort to scare us into capitulation regarding the potential indictment of his client. In my experience, it is not uncommon for a high-profile defendant to test the mettle of the prosecution. It was my view that we should meet this test by standing firm.

It was my professional view then, and it is my professional view now, that if Mr. Hale had evidence of wrongdoing of high-ranking public officials, as he apparently claimed to the media, our investigation would have been promoted not hindered by requiring Mr. Hale to acknowledge and be held accountable for his participation.

It was my professional view then, and it is my professional view now, that if we capitulated to Mr. Hale's demand for no prosecution of him or prosecution for only a minimal offense, Mr. Hale's credibility and usefulness as a witness would have been of little, if any, benefit.

Furthermore, I want to point out that the process on which we insisted was the typical tried and tested process. It is a common occurrence, when dealing with potential defendants who seek leniency in exchange for information, to demand and obtain from them a proffer, that is a preview of the evidence they have to offer before agreeing to the arrangement.

The process on which we insisted required Mr. Hale to provide the specific information he had available to the FBI agents investigating the matter. Mr. Hale's proffer would be protected by our standard promise that his statement could not be used as a basis for prosecution of him.

The purpose of such a proffer was to allow the FBI and our office an ample opportunity to assess and corroborate the information, and to make the determination whether to enter into a plea arrangement whereby Mr. Hale would receive leniency in exchange for the information and testimony. It was standard Department of Justice operating procedure. It was the best process that my 22 years of experience told me would be effective for prosecution of any high-ranking officials who might be implicated; and it was the best process consistent, in my view, with good lawyering as a prosecutor.

And last, the steadfast approach we took proved to be effective. Through his attorney, David Hale finally began to negotiate in earnest with our office on October 21, 1993. As a result of that negotiation, Mr. Hale agreed to accept a felony plea and make himself available for interview. However, by the time he did so, on November 8, 1993, our office had recused from the case. Thus, the final

details of the negotiation were passed to the departmental attorneys assigned to the matter, and later to the Independent Counsel's Office. Those negotiations, as I said, ultimately resulted in Mr. Hale's pleading to two, rather than one, felony offenses.

With regard to the matter of Madison Guaranty, I first became aware of the Hale investigation and the Madison Guaranty investigation around the time I became First Assistant. My primary knowledge of the substance that the FBI wanted to investigate regarding Madison came from discussions I had with the investigating agent and his supervisor. They outlined a series of transactions that they believed warranted investigation. I had worked with both of these people previously, and had great respect for their opinions and approach to a complicated investigation.

During that timeframe, September and October 1993, the FBI agents made me aware of the difficulty they had dealing with the Kansas City office of the RTC. The agents indicated to me that they were seeking records in the possession of the RTC essential for the initial phase of the FBI's criminal investigation. They indicated to me that the RTC had continually represented to them that the records needed to be retained in Kansas City so that the RTC personnel could prepare criminal referrals. They indicated to me that the criminal referrals had been promised in July 1993, but the RTC kept delaying the date. The agents further indicated to me that they believed the referrals would concern the same matters that the FBI had outlined to me and already wanted to investigate.

The agents asked for my intercession and assistance in obtaining the necessary documents from the RTC. I spent a good deal of time in September and October attempting to resolve this issue, including seeking assistance from the Department of Justice to do so.

Ultimately, we simply had to wait until the RTC sent the referrals in mid-October before we could actually begin what we had been already attempting to do.

With regard to the recusal of the U.S. Attorney's Office, the issue of recusal of the U.S. Attorney's Office from investigating the matters referred to our office by the RTC in October 1993 must be discussed in the context of the David Hale matter.

The issue of recusal arose in a letter from Mr. Hale's attorney in mid-September. Mr. Hale's attorney contended that Paula Casey should recuse because she had been nominated to be U.S. Attorney by the President. However, there was no reason to recuse regarding the prosecution of Mr. Hale. And Mr. Hale repeatedly refused to provide any specific information regarding alleged wrongdoing of others on which to evaluate the propriety of recusal as to other persons or investigations.

The first discussion of recusal between our office and Department of Justice officials in Washington, DC occurred in a phone conversation between Acting Assistant Attorney General Jack Keeney and me on September 20, 1993. Mr. Keeney raised the issue based on the assertions by Mr. Hale. I told Mr. Keeney that I adamantly opposed recusal by our office. I explained to Mr. Keeney that, in my view, if our office recused solely because a person about to be indicted for fraud had stated to the media that he had important information about important people, it would risk incapacitating our office for the entire time that Bill Clinton was the President.

I explained that Mr. Hale had refused to make himself available for interview so that specific information could be obtained, and that Mr. Coleman had provided letters between this office and him—his office—excuse me. This office and him to the press. I stated that I considered those acts to be in bad faith and not the acts of a person who is seriously seeking a compromise. I also told Mr. Keeney that there was no factual basis for either Ms. Casey to recuse individually or the office to recuse from the Hale matter.

Although Mr. Keeney and I had different views about whether recusal was appropriate at that point, Mr. Keeney and I also discussed the letters between our office and Mr. Coleman. I read to him our proposed response to Mr. Coleman's last letter. Mr. Keeney agreed that the response was the correct and appropriate approach. The issue of recusal was not raised again until after we received the 1993 referrals from the RTC.

I informed Paula Casey of my discussion with Mr. Keeney. She and I had a number of conversations regarding recusal from that point until our office did recuse on November 5, 1993. Those discussions, however, focused on the anticipated referrals from the RTC. Ms. Casey indicated that, if matters involving certain individuals came to our attention that merited investigation and potential prosecution, she would recuse.

I advised Paula Casey of the same things that I had told Mr. Keeney, and urged her for the same reasons not to consider recusal unless and until we had obtained information on which a recusal might be warranted, and until we had an opportunity to assess the reliability of that information. It was my professional view then, and it is my professional view now, that to do otherwise was irresponsible and would abdicate our duty as prosecutors.

As soon as we received the RTC referrals and read them in mid-to-late October, Ms. Casey stated she believed she should recuse at that time. I disagreed.

It was my view that it was inappropriate to recuse without making a preliminary assessment of the worth of those matters, and I continued to press that point. I urged Ms. Casey to delay any issue of recusal, to first allow me to oversee such a preliminary assessment. I had no connection to or relationship with any of the named persons, and was entirely unfamiliar with some of them. Although Ms. Casey believed that recusal would be the proper and perhaps the inevitable outcome of our involvement, she agreed to follow my advice and allow me to conduct a preliminary assessment.

Part of my insistence that we make our own preliminary assessment of the allegations in the RTC referrals was based on my past experience with the RTC in the events involving the RTC in September and October. I did not have the confidence in the RTC that I had in the FBI.

Moreover, I had, by the end of this time, read the RTC referrals sent to our office in 1992 regarding Madison Guaranty. The nature of the referral and the manner in which it was set forth made me cautious about relying on allegations by the RTC as the sole basis to make the important decision of recusal.

Simply put, I believed that to make a prudent professional judgment about the proper course of action required further evaluation by me and the agents with whom I had an established and good

working relationship. To do so required the preliminary collection and assessment of pertinent materials. I felt that that should be done prior to deciding whether Ms. Casey and/or the U.S. Attorney's Office should recuse. The actions I took reflect my view.

After assessing the referrals, I met with the FBI agents responsible for conducting the investigation and discussed the referrals with them. We mapped out an investigative strategy, including prioritizing the referrals. We drafted and issued subpoenas to obtain pertinent documents. We arranged to travel to Kansas City where the records were stored, to preliminarily assess the documents and work out logistics for access to them.

As the Committee knows, my goal to make a thorough preliminary assessment ended with our office's recusal. Several days prior to my scheduled trip to Kansas City, Paula Casey called me from Washington, DC and informed me that, after consulting with officials at the Department of Justice, she was recusing herself and our office from further involvement in the investigation. I still expressed my disagreement with the timing of that decision. However, Ms. Casey felt the recusal should be done without further delay. After our recusal, I assisted the Departmental attorneys and later the Independent Counsel in making the transition and in obtaining all they needed to carry on with an effective investigation.

Finally, I want to point out that if this Committee has any criticism regarding the timing of the recusal of the U.S. Attorney's Office, that criticism should be directed at me.

The leak of the referrals to the media at the end of October and the storm that has followed has resulted in unfair and unwarranted criticism of Paula Casey. She has done a superb job as the U.S. Attorney. She has attempted to do what was just and right, and has been accused of doing what is wrong.

I hope by appearing here today and answering all the questions this Committee has that it is clear to the Committee, and all others who will take the time to listen, that the assertions of wrongdoing on the part of Paula Casey or the U.S. Attorney's Office are incorrect, unfair, and unwarranted.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Jackson, do you have a statement?

SWORN TESTIMONY OF FLETCHER JACKSON
ASSISTANT ATTORNEY, U.S. DEPARTMENT OF JUSTICE

Mr. JACKSON. Mr. Chairman, because of the time, I will waive an opening statement.

The CHAIRMAN. Thank you very much.

Mr. CHERTOFF. Mr. Jackson, I know you are a long-time member of the Justice Department and so if you would just give us for the record——

Mr. JACKSON. I came to work as an Assistant U.S. Attorney in 1971, which makes it approximately 25 years ago, and I've been an Assistant ever since.

The CHAIRMAN. Mr. Jackson, have you always been in the Arkansas office?

Mr. JACKSON. Yes, sir.

The CHAIRMAN. OK. Thank you very much.

Mr. CHERTOFF. I started to say good morning but I really should say good afternoon. I hope I don't have to say good evening by the time we're done.

Mr. Jackson, you picked up the Hale case when it was referred over to the U.S. Attorney's Office?

Mr. JACKSON. Essentially it came in I believe it was about the first part of June. I heard reference this morning to a letter that had been written by SBA to Mr. Hale in May, that it was going to be referred—the Inspector General SBA referred it to the FBI Little Rock for investigation. The agent to whom it was assigned I had worked with in the past. He asked me to look it over and I looked it over and then I went back and talked to the Acting U.S. Attorney and he assigned it to me. That would be approximately early June, I believe, of 1993.

Mr. CHERTOFF. Now, there was a search warrant executed on Mr. Hale's premises in July; right?

Mr. JACKSON. Correct. It would be—I don't know the exact date. It would be the day after, I believe, Mr. Foster committed suicide, whichever date that would be.

Mr. CHERTOFF. You eventually got to look at the documents that were seized in Mr. Hale's office; correct?

Mr. JACKSON. I'm the first one that went through them.

Mr. CHERTOFF. Is it fair to say that by the time Randy Coleman came in August 1993, you understood that among the people who had received loans as a consequence of Mr. Hale's activities were Susan McDougal, the wife of James McDougal, and a group of businessmen including Jim Guy Tucker; correct?

Mr. JACKSON. Correct.

Mr. CHERTOFF. You knew that Jim Guy Tucker was then the Governor of Arkansas?

Mr. JACKSON. Correct.

Mr. CHERTOFF. And I assume that in your mind, you understood that you were immediately dealing with a sensitive case simply by virtue of the fact that the Sitting Governor of Arkansas was involved in the business transactions that were the subject of this investigation?

Mr. JACKSON. I knew that before the search.

Mr. CHERTOFF. When Ms. Casey came into the office, did she sit down with you and talk to you about the nature of what your cases were?

Mr. JACKSON. My recollection is this. I think whatever information she got I guess would have come from the Acting U.S. Attorney at the time, Richard Pence, whatever he told her.

I recall that at some point, most of my conversations were with Mr. Johnson, and I assume he would have passed that information on to her.

I recall with regard to the indictment that we had a little bit of a statute of limitations problem. I don't know if it was with her or if it was at the grand jury meeting, it was discussed with Ms. Casey that this needed to be done, and basically what may be involved.

Mr. CHERTOFF. Well, let me ask you this. My experience is that when you get a case involving strong proof against a witness who may have evidence against other witnesses or other individuals, in-

cluding a prominent person like the Governor of Arkansas, that becomes a matter of top priority concern for the U.S. Attorney. I mean, Ms. Casey, you went in and you talked to Mr. Jackson at some point in August about the Hale case; correct?

Ms. CASEY. Correct.

Mr. CHERTOFF. He explained to you that Governor Tucker was involved in the case in some way?

Ms. CASEY. No, Mr. Chertoff, Governor Tucker was not involved in the case that Fletcher was planning to indict in September.

Mr. CHERTOFF. Was he involved in having received loans from the small business company that David Hale was operating in a fraudulent fashion?

Ms. CASEY. Fletcher told me that his continued investigation of the David Hale matter could possibly involve Governor Tucker. I don't know that he told me specifically what that involvement might be. I don't know that he knew at the time.

Mr. CHERTOFF. Well, I assume that when you heard that further investigation of the Hale case, and Hale himself was a Sitting Judge, might involve the Governor of the State, you immediately reacted by understanding you were dealing with a very important case; right?

Ms. CASEY. Yes.

Mr. CHERTOFF. It was not just a run of the mill bank robbery, or run of the mill drug case, or even a run of the mill white-collar case; it was a case potentially involving the Sitting Governor of the State, as well as a Sitting Judge in the State; is that correct?

Ms. CASEY. That's correct.

Mr. CHERTOFF. Now, you knew Governor Tucker?

Ms. CASEY. Yes, I did.

Mr. CHERTOFF. What was the nature of that relationship?

Ms. CASEY. I'm sorry? I can't hear you.

Mr. CHERTOFF. What was the nature of your relationship with Governor Tucker?

Ms. CASEY. I had known Governor Tucker for some period of time. I knew his wife when she was a law student at the University of Arkansas at Little Rock where I was on the faculty.

Mr. CHERTOFF. Were you social friends of the Tuckers, you and your husband?

Ms. CASEY. Social in the sense that I sometimes saw them at functions. I don't know that I've ever seen them at a private party.

Mr. CHERTOFF. Did your husband hold a position in the administration of the State of Arkansas?

Ms. CASEY. My husband is the Chief Staff Counsel for the Arkansas Public Service Commission, which is the utility regulatory agency for the State. That is not a political appointment.

Mr. CHERTOFF. Who are the commissioners, are they political appointees or civil service appointees?

Ms. CASEY. The three commissioners are appointed by the Governor. My husband does not work for the commission; he works for the staff.

Mr. CHERTOFF. The commissioners run the commission, the commissioners preside over the commission?

Ms. CASEY. My understanding of the commission is that it's sort of a bifurcated agency. There is a staff and there is a commission.

My husband is the chief counsel for the staff side. There is also a legal staff that works for the commissioners but it is a separate legal staff.

Mr. CHERTOFF. Now, Ms. Casey, when you heard there's a case involving a Sitting Judge which potentially could lead to an investigation of the Sitting Governor, did you make any effort either through your First Assistant or through anybody else to indicate that you wanted to have priority attention directed to that case?

Ms. CASEY. When I first learned that this—that continued investigation of Mr. Hale could lead back to people like Governor Tucker, I didn't have a First Assistant. I was in the process of selecting a First Assistant when I learned that information. But shortly thereafter, I did select a First Assistant and yes, Michael and I discussed the fact that that was a matter he needed to pay attention to, and he did.

Mr. CHERTOFF. Did you view it as a matter that you needed to pay attention to as a U.S. Attorney?

Ms. CASEY. Certainly.

Mr. CHERTOFF. Mr. Jackson, when Mr. Coleman came in, did he indicate to you in his conversation—one of his conversations in August that potentially the areas in which Mr. Hale might be helpful if he were to cooperate would involve information touching upon Governor Tucker and even former Governor Clinton?

Mr. JACKSON. If I recall the conversation, I am the one who told him.

Mr. CHERTOFF. You're the one who told him?

Mr. JACKSON. Yes.

Mr. CHERTOFF. So you said to Mr. Coleman that your understanding from your investigation of the case is that if Mr. Hale cooperated, he might be able to give you useful information against Governor Tucker and former Governor Clinton?

Mr. JACKSON. Well, from Mr. Coleman's connections, I assumed he knew about the same thing that I did about what it was all about. And if I recall the correct words that I used were that from Hale, the path would lead to Mr. McDougal, and then the road would divide, one branch would possibly go over to Mr. Tucker and the other branch would possibly go over to Whitewater and the Clintons, so——

Mr. CHERTOFF. I'm sorry. Finish, please.

Mr. JACKSON. We were essentially talking—I thought Mr. Coleman and I were on the same sheet as to names. We didn't get into details.

Mr. CHERTOFF. So even before Mr. Coleman came in, based on your own investigation of the case, based on what you had learned from the material in the search warrant, and based on your investigations with the agents, you had your own understanding that this case could lead to Governor Tucker and to former Governor Clinton?

Mr. JACKSON. A lot of this had already been in the newspapers. The reference of Governor Tucker's loans out at Madison had been subject to several newspaper things. Whitewater had been all over the newspapers, so this was not exactly something that was not known among quite a few people.

The CHAIRMAN. Mr. Jackson, let me ask you, did you share this information as you went along with Mr. Johnson at any time?

Mr. JACKSON. The essential situation there at the office at that time, they were trying to get up and running. You had a brand-new U.S. Attorney, you had a brand-new First Assistant, and they were trying to get the office under some sort of control so I didn't run in at every moment and talk to Mr. Johnson.

The CHAIRMAN. I know not at every moment, but did you, with this kind of a matter, as you said, involving these people, potentially the Governor, potentially the former Governor and now President, and potentially the McDougals, did you share this with Mr. Johnson?

Mr. JACKSON. I gave Mr. Johnson—he wanted to know what significant cases we were working on, and I gave him a list and those names were on the list, and we went through what I was doing.

The CHAIRMAN. About when was that?

Mr. JACKSON. That would be when he first became First Assistant, which I assume would be the first part of September.

The CHAIRMAN. Mr. Johnson, do you still want to maintain that when you have a long-time, experienced assistant like Mr. Jackson who gives you a case of this magnitude, spelling out the names that are involved and indicating to you the potential there, that your advice at that time that Ms. Casey should not recuse herself was right? You want to say that? That's your contention?

Mr. JOHNSON. That is, Senator.

The CHAIRMAN. Well, I'll tell you, that is absolutely incredible. If that's the advice that you gave to Ms. Casey at that time.

Ms. Casey, you don't see the problem with that, at least at this time? Mr. Keeney did; and he told you that when you called him, didn't he?

Ms. CASEY. Senator, I spoke with Mr. Keeney the third week in September prior to the time that Mr. Hale was indicted. At that point in time, Mr. Hale had proffered no information. Mr. Keeney thought that I should recuse, and the reason he thought I should recuse was that Irv Nathan had received an anonymous telephone call. I didn't feel that that was a basis for recusal.

The CHAIRMAN. Let me ask you this, though. You were aware of the other people who were involved or had at least potential involvement and some of them were indicted. You were aware of the McDougals being possibly involved, weren't you?

Ms. CASEY. I was aware that the McDougals were named.

The CHAIRMAN. I mean, you saw even the first referral, which is not an indictment, and as inartful as it might be, it mentions Susan McDougal, it mentions Mr. McDougal, and it mentions the Clintons, it says that there are very real problems as it relates to the business relationships. It mentions Jim Guy Tucker, and you didn't see any reason to seek immediately guidance as it related to recusal, and when you did, Mr. Keeney said what? What did he say to you, the Acting Attorney General?

Ms. CASEY. Mr. Keeney felt that I should recuse on the basis of the anonymous telephone call that Irv Nathan had received, but I felt that that was insufficient.

The CHAIRMAN. Now, notwithstanding that you were aware and that Mr. Jackson had indicated that among the high-profile cases

that he was working on was this particular matter which had direct relationships and direct ties to the people involved—to the McDougals, to the Clintons, and to Governor Tucker?

I have to tell you, 20-plus years, Mr. Johnson, you would advise a new U.S. Attorney, given the circumstances of her appointment, and given the circumstances of her husband's appointment, to continue on?

Mr. JOHNSON. I did, Senator, and I would like——

The CHAIRMAN. Do you see the error of your way at this time?

Mr. JOHNSON. I do not.

The CHAIRMAN. You do not?

Mr. JOHNSON. No, sir.

The CHAIRMAN. Then there is no sense in me pursuing this line with you. Go ahead.

Mr. CHERTOFF. Let me ask you this, Ms. Casey——

Senator SARBANES. Give him a chance to answer.

Mr. CHERTOFF. Let me ask you something, Mr. Johnson. You were told, Ms. Casey, you were aware early in September about Mr. Jackson's case?

Ms. CASEY. Are you addressing me?

Mr. CHERTOFF. Yes, Ms. Casey, you. Were you aware of his case?

Ms. CASEY. I was aware of his case by the end of the second week of August 1993.

Mr. CHERTOFF. Now, when Mr. Coleman came in to meet with you, did you have Mr. Jackson sit in on the meeting?

Ms. CASEY. Mr. Jackson was not there.

Mr. CHERTOFF. Did you invite him in?

Ms. CASEY. Mr. Jackson and I discussed the fact that Mr. Coleman was coming over. My recollection is Fletcher didn't want to be there. The meeting lasted for such a brief period of time, I didn't call him in.

Mr. CHERTOFF. Mr. Jackson, did you not want to be there?

Mr. JACKSON. No, I thought it was a waste of time.

Mr. CHERTOFF. Ms. Casey, did you take the case at some point away from Mr. Jackson and give it to Mr. Johnson?

Ms. CASEY. No, I never reassigned the case off of Fletcher's docket. I just asked Michael to—well, Michael was my First Assistant, he knew that that was one of the more high-profile matters in the office at the time.

Mr. CHERTOFF. When you heard that there was an investigation that potentially touched upon the Governor and the President, did you pick up the phone and call the Department of Justice in Washington?

Ms. CASEY. I picked up the telephone and called the Department of Justice—I'm trying to remember the dates. The weekend of September 17, but, Mr. Chertoff, may I also say that the 1992 RTC referral had been at the Department of Justice since the previous fall, so they knew.

Mr. CHERTOFF. I'm not talking about the 1992 RTC referral. I'm talking about the Hale matter and the fact that you have an assistant in your office who knows as of August, even apart from what Mr. Coleman tells him, that there's a case there that, as he puts it, one path leads to the Sitting Governor and the other path leads to the President. Did you pick up the phone as soon as you heard

that, as a new U.S. Attorney, and call up either the U.S. Attorney General or the U.S. Deputy Attorney General and say I have a case in my hand that is a very sensitive, urgent case that needs to be brought to your attention?

Ms. CASEY. No, I did not.

Mr. CHERTOFF. Do you know what an Urgent Report is?

Ms. CASEY. Yes, I do.

Mr. CHERTOFF. Don't they tell U.S. Attorneys they are supposed to contact the Department of Justice when there are sensitive cases involving high-ranking political officials?

Ms. CASEY. Yes, they do.

Mr. CHERTOFF. Did you do that?

Ms. CASEY. No, I did not.

Mr. CHERTOFF. Why didn't you do it?

Ms. CASEY. First of all, we had not reached that point. My understanding from Fletcher was that there was the potential that he could lead to some of these people, but, you know, for that matter I suppose every loan file at that SBIC was a potential defendant. That's one matter.

But let me also say that I know now what an Urgent Report is. I didn't send an Urgent Report, I didn't know at that time what an Urgent Report was. I called the Director of the Executive Office for U.S. Attorneys to seek advice from him.

Mr. CHERTOFF. When? When did you tell the Director the——

Ms. CASEY. The weekend of September 17.

Mr. CHERTOFF. Why did you wait between the time you first spoke to Mr. Jackson, or Mr. Johnson first spoke to Mr. Jackson and learned about the case and understood who was potentially involved? Why did you wait until September 17 to call the Director?

Ms. CASEY. Because the only matter that had been developed that was in my office was the matter of David Hale and the Small Business Administration fraud. It didn't involve any of those other people.

Mr. CHERTOFF. From what Mr. Jackson told you, even before Mr. Coleman came in, you had to understand that potentially if Mr. Hale became a cooperator, he could give you evidence against a Sitting Governor and maybe a former Governor. Mr. Johnson, you didn't understand that?

Mr. JOHNSON. Well, Mr. Chertoff, I would like to explain when I learned what I learned.

Mr. CHERTOFF. When did you learn what Mr. Jackson said he knew before Mr. Coleman walked in in August?

Mr. JOHNSON. The memo that Mr. Jackson mentioned that I asked for from all the assistants concerning significant cases, I think, has been provided to the Committee, and if I remember correctly, it is dated approximately September 16. So around the same time that I learned from Mr. Jackson the scope of where he thought his investigation might go was around the same time that Ms. Casey did contact the Department of Justice.

I would further point out that we were dealing with potential here. In my experience in the 20 years—now 22 years that I have been with the Department of Justice, I have heard a lot of allegations about a lot of people, particularly political figures and public

officials. It does not strike me as unusual and did not strike me as unusual then to hear someone make an allegation.

An allegation is not enough, in my mind then or now, to cause a recusal. I would further point out——

Mr. CHERTOFF. I'm not even at recusal yet, Mr. Johnson. I'm at the way the Department of Justice works. You have a case here in which the assistant working the case knows who at the end of the line might be potentially brought into the case where you have documents showing the Sitting Governor, at least on the face, is engaging in business transactions with individuals as to whom there is powerful evidence—Ms. Casey, will you admit that you talked to Mr. Jackson in August about his case as you were in there visiting with him?

Ms. CASEY. Yes, I did visit with him in August.

Mr. CHERTOFF. How big was your office? How many assistants were there?

Ms. CASEY. I have 19 or 20 assistants.

Mr. CHERTOFF. Is it your testimony that until the 16th, Mr. Johnson, you just couldn't kind of get it together to figure out what Mr. Jackson had in his file?

Mr. JOHNSON. Mr. Chertoff, the information Mr. Jackson provided to Ms. Casey was not information that was provided to me by either Mr. Jackson or Ms. Casey. The only indication that Mr. Jackson gave me was that he had an investigation pending, that he was anticipating an indictment of David Hale for the September Grand Jury, that if the investigation developed, it would lead back into Madison Guaranty, which had been the subject of a prosecution by our office some 3 years earlier, and that if it did and if it developed, it potentially could lead to these other people that he has named.

That's all the information that I had. I would like to point out that at the time that Ms. Casey came to the U.S. Attorney's Office, I had a full docket of cases and was getting ready for a major RICO trial, and I was making the transition at that time from handling a full docket that was occupying all of my time to becoming a manager in the office, and so this didn't stop instantaneously that I became a manager and picked up understanding and responsibility for every other case that every other assistant had in the office, particularly someone as experienced as Mr. Jackson, who I did not feel that I had to monitor in every aspect of his case.

Later in September or around the same time, actually, because of matters brought to my attention by the FBI, I felt that I needed to become much more involved and did become daily involved in the management of that case.

Mr. CHERTOFF. Now, Ms. Casey, when you heard about this case, why didn't you pick up the phone and call someone immediately in Washington?

Ms. CASEY. When I first heard about this case, the case I heard about was the case against David Hale. It was an SBA fraud. What Fletcher told me was that his investigation of that SBA fraud was essentially complete, and he planned to present it for indictment in September. He went on to tell me that he was continuing his investigation of David Hale, that he anticipated that there could be further indictments, and that he also thought that investigation could

eventually lead to other people, and he included as one of those other people—well, some of those other people that we have talked about.

Mr. CHERTOFF. You mean President Clinton and Governor Jim Guy Tucker?

Ms. CASEY. That's correct. However—but, Mr. Chertoff——

Mr. Chertoff. Mr. Jackson is not just a guy——

Ms. CASEY. I'm sorry, Mr. Chertoff. I wasn't finished with my answer. That's what he told me, that he could get there but he wasn't there. I never had the understanding that he had any evidence, any documents, any developed investigation. What he had was—because of his knowledge of Madison Guaranty and that SBA fraud, what he had was the feeling that that's where his investigation could go, but that's all he had at that point.

Mr. CHERTOFF. How many more years of experience as a prosecutor did Mr. Jackson have as compared to you when you became a U.S. Attorney?

Ms. CASEY. However many years he had been there when I arrived.

Mr. CHERTOFF. About 22 years?

Ms. CASEY. Is that right?

Mr. CHERTOFF. Is that about right, Mr. Jackson?

Mr. JACKSON. Yes.

Mr. CHERTOFF. Mr. Jackson, did you have difficulty making it clear to Paula Casey that when you say an investigation can lead somewhere, it is based upon your knowledge of the evidence in the case?

Mr. JACKSON. I think these were just names, potential names. I wasn't telling her that I had any hard evidence or that I was going to be able to get anybody other than David Hale, that these were just, you know, names that were out there. As a matter of fact, at that time I never did think that she would get much further than Hale and McDougal.

Mr. CHERTOFF. You knew, though, from the evidence you had seen in the case that if you could get cooperation from, let's say, Hale or McDougal it might take you to other people; is that correct?

Mr. JACKSON. You would have to take down David Hale and then you would have to take down Jim McDougal. Then if McDougal cooperated, he might give you something that would enable you to do some of the other people, but you were going to have to go in a sequence. But we had no hard evidence and by the time I left I still had no hard evidence on any of the high-profile people that we're talking about.

Mr. CHERTOFF. When you say by the time you left, you mean by the time the case—when did you leave?

Mr. JACKSON. When Mr. Mackay came in, around the first of November.

Mr. CHERTOFF. A few months later; is that right?

Mr. JACKSON. Right.

Mr. CHERTOFF. On September 24, you had a meeting, Ms. Casey, with agents and Mr. Johnson about this case; is that correct?

Ms. CASEY. That's correct.

Mr. CHERTOFF. Do you remember Agent Irons?

Ms. CASEY. Yes, I do.

Mr. CHERTOFF. Was he the case agent on the Hale case?

Ms. CASEY. No, he was not. He was the head of the three squad, the white-collar crime squad at the FBI.

Mr. CHERTOFF. In the course of that meeting, did you, yourself, indicate that there was a necessity or there might be a necessity for you to recuse yourself from the matter due to your close friendship with Jim Guy Tucker, Seth Ward, and Stephen Smith?

Ms. CASEY. No, sir, I did not. I told them that if the investigations led to Governor Tucker, that I would recuse. I do not know Seth Ward. I am an acquaintance of Steve Smith's.

Mr. CHERTOFF. Let's put this up on the Elmo, please. I think you have a copy.

The CHAIRMAN. Let's make sure she has a copy, please.

Mr. CHERTOFF. I think you do have a copy there. We heard something about Agent Irons a couple of days ago about his—we heard some of his reports and this is another one of his reports and I want to direct you to the second paragraph where it says: "The meeting was held to accomplish two objectives. The USA"—that's the U.S. Attorney—"wanted to determine if she would have to recuse herself from the matter due to her close friendship with Jim Guy Tucker, Seth Ward, and Stephen Smith." Correct or not correct?

Ms. CASEY. That is what the memo says, yes, sir.

Mr. CHERTOFF. Is that true, is that what you said?

Ms. CASEY. No, sir, it is not. I don't know Seth Ward.

Mr. CHERTOFF. Is the memo wrong?

Ms. CASEY. The memo is wrong in that respect. I don't know Seth Ward. I've never met Seth Ward. I've met Steve Smith on several occasions. My concern about Governor Tucker was probably more prominent than either—than Steve Smith and certainly more than Seth Ward because I don't know him.

Mr. CHERTOFF. Did you know who Seth Ward was?

Ms. CASEY. I knew that he was Webb Hubbell's father-in-law.

Mr. CHERTOFF. How did you know that?

Ms. CASEY. I just knew that.

Mr. CHERTOFF. Did you know Webb Hubbell?

Ms. CASEY. I knew who Webb Hubbell was, certainly.

Mr. CHERTOFF. Next paragraph. "After hearing the estimation of both writers," that would be Mr. Irons, "and AUSA Jackson," that's you, Mr. Fletcher Jackson, "on the involvement of Tucker, Ward, and Smith, USA Casey advised she would have to recuse herself and only had to decide the best time to do so." True or false? Did you say that?

Ms. CASEY. Again, I never said that with respect to Seth Ward. I don't know why—I don't know where that comes from.

Mr. CHERTOFF. Strike Ward. With respect to Tucker?

Ms. CASEY. Yes, sir, I did, I told them that. I wanted the FBI to be aware that I would recuse if that's where the investigation was going. I thought they ought to know that.

Mr. CHERTOFF. Why did you tell them that? Why did you say that you believed it was appropriate to recuse if the investigation headed to Tucker?

Ms. CASEY. Because it was my belief that that would be the appropriate action for me to take.

Mr. CHERTOFF. Because of your personal relationship with the Tuckers; right?

Ms. CASEY. Personal relationship, professional relationship, yes, sir.

Mr. CHERTOFF. So at that point, as of September 24, you had already decided that the nature of the relationship with the Tuckers meant you would have to recuse and the only question was when you would do it based on how ripe the investigation got. Is that what you're telling us?

Ms. CASEY. Yes, I'm telling you that. I knew that. I told Fletcher that when he and I talked about Tucker being a potential target in August.

Mr. CHERTOFF. On September 20, 4 days before that, you had a conversation with Mr. Keeney about this; right? This issue of recusal?

Ms. CASEY. Yes.

Mr. CHERTOFF. That's because Mr. Keeney learned from a superior in the Department of Justice or heard from a reporter that there was an investigation involving David Hale that had mentioned the President; correct? Isn't that how Mr. Keeney and you came to speak on the 20th of September, because the Department of Justice had heard from a reporter that Mr. Hale was making allegations against the President?

Ms. CASEY. If the reporter was the anonymous telephone call, yes, sir.

Mr. CHERTOFF. In other words, Mr. Irv Nathan at the Deputy Attorney General's Office and Mr. Jack Keeney, the Acting Head of the Criminal Division, didn't learn about the Hale investigation and the possible involvement of the President from you; they learned about it from an outsider, from an anonymous call; correct?

Ms. CASEY. Mr. Chertoff, the Hale matter did not involve the President. The Hale matter involved a fraud against the Small Business Administration.

Mr. CHERTOFF. The allegations that Mr. Hale made, they learned about not from you, not from information you conveyed up the chain of command, but from what came across the transom in an anonymous phone call; correct?

Ms. CASEY. Yes. That is the only way they could have learned that. Don't forget, Mr. Hale didn't make any of his allegations to me, he only made them to the press.

Mr. CHERTOFF. Mr. Jackson, didn't Mr. Coleman mention to you that Mr. Clinton and Mr. Tucker could potentially be ultimately defendants in a case or could ultimately be brought into a case if Mr. Hale cooperated?

Mr. JACKSON. I am trying to remember exactly how it was said. I mean, that was a given, that there was always the potential for Hale to know something.

Mr. CHERTOFF. But Mr. Coleman brought it up to you specifically when you met with Coleman.

Mr. JACKSON. I brought it up with Coleman, I think.

Mr. CHERTOFF. So you both talked about it?

Mr. JACKSON. It was my understanding Mr. Coleman and Mr. McDougal used to spend a lot of time together at a certain point in time at Mr. Hale's office, so there was always a possibility that Mr. McDougal would have shared something with Mr. Hale but it wasn't a given so I cannot say that you would have gotten anywhere with it.

Mr. CHERTOFF. When you spoke to Mr. Keeney on the 20th, Ms. Casey, did he suggest to you as well you ought to recuse yourself?

Ms. CASEY. Yes, he did.

Mr. CHERTOFF. In this conversation, did you tell Mr. Keeney that Mr. Coleman was refusing to make a proffer of information to your office because he felt uncomfortable with your office, given the relationship with the small community in Arkansas?

Ms. CASEY. I do not believe that is the way I expressed it to Mr. Keeney.

Mr. CHERTOFF. Well, how did you express it to Mr. Keeney?

Ms. CASEY. It's very difficult—I don't remember the specific conversation, but it was never my understanding that was the reason Randy Coleman was reluctant for his client to give a proffer. I'm sure that what I must have told Mr. Keeney was that Randy Coleman was attempting to negotiate a plea arrangement for his client and we wanted his client to take the next logical step, which was to proffer whatever information he had, but he had refused to do that; and until he did that, there was nothing else that I could do.

Mr. CHERTOFF. Let me read to you from Mr. Keeney's deposition, page 51.

The CHAIRMAN. Let's be fair now.

Mr. CHERTOFF. Do you have a copy of this?

Ms. CASEY. No, sir.

Mr. CHERTOFF. I think it's in your folder.

The CHAIRMAN. Let's refer Ms. Casey to a page and to the folder.

Mr. CHERTOFF. It's a manuscript, pages 50 to 55.

Ms. CASEY. You're referring to a deposition?

Mr. CHERTOFF. Right, of John C. Keeney.

The CHAIRMAN. What line are we going to start with?

Mr. CHERTOFF. At page 51, and it's going to start at line 13.

The CHAIRMAN. Do you have that?

Ms. CASEY. Thank you very much.

Mr. CHERTOFF. Starting at page 51, line 13:

Question: [Mr. CHERTOFF.] Did you make it clear to her, [that's you] at that point in time that if Mr. Coleman wanted to come to main Justice to negotiate the plea, that she should tell him, convey to him, that he could do that?

Answer: No, what I said was they indicated that Coleman refused to make a proffer to the office in Little Rock because he didn't trust them. I said if he doesn't want to make the proffer there, he can come to Washington and make the proffer to us.

Question: Did you ask her to convey that to him?

Answer: Yes.

Now, do you dispute the fact that in the conversation with Mr. Keeney, you told Mr. Keeney or Mr. Keeney expressed the understanding that Coleman refused to make a proffer to your office because he didn't trust the office, in substance?

Ms. CASEY. Mr. Chertoff, I wouldn't dispute Mr. Keeney's memory. I don't recollect that that's the way the conversation went, but he may well have had that understanding.

Mr. CHERTOFF. Did Mr. Keeney ask you, as he says here he did, to tell Mr. Coleman that he could reach the Department of Justice in Washington to make a plea offer if he wasn't comfortable making the offer in Little Rock?

Ms. CASEY. Again, I don't dispute Mr. Keeney's memory; however, I don't recall that anyone ever suggested to me that I should send Randy Coleman to the Department of Justice rather than dealing with him in Little Rock. I think I would remember that had it happened, and I believe that actually Mr. Keeney made that statement to Michael Johnson and not to me.

Mr. CHERTOFF. Mr. Johnson, did he make the statement to you?

Mr. JOHNSON. He did in a phone——

Mr. CHERTOFF. Did you convey to Mr. Coleman that he ought to do that?

Mr. JOHNSON. That comment was made by Mr. Keeney to me in a long conversation regarding the issue of recusal, and I did not come away from that conversation with a clear understanding that Mr. Keeney was requiring or insisting that I make that representation to Mr. Coleman, because we talked about and had a disagreement, as I have set forth in my deposition, about the issue of recusal—Mr. Keeney and I had a disagreement.

We then talked about and I read to him the draft of the letter that subsequently was sent to Mr. Coleman dated September 21, and he indicated to me that he agreed that was proper and appropriate and should be sent. That's how the conversation with Mr. Keeney ended and that's what we did.

Mr. CHERTOFF. My time is up. Let me leave you with a question, Ms. Casey and Mr. Johnson. Did either of you suggest to Mr. Coleman that if he was uncomfortable, as he had expressed that he was in his letter of September 15, in dealing with your office, rightly or wrongly that he was uncomfortable with it, that he should pick up the phone and call Jack Keeney in the Department of Justice, who was aware of the matter and was prepared to talk to him? Did either of you suggest that to Mr. Coleman?

Mr. JOHNSON. Mr. Chertoff, I don't remember specifically whether I told Mr. Coleman that. We had a number of conversations. I do recall Mr. Coleman's testimony from this morning where he——

Mr. CHERTOFF. Don't give us his testimony. Tell us what you remember, not what he said this morning. We were all here this morning.

Mr. JOHNSON. OK. I do not recall whether I said that to him explicitly or not. His focus in his conversations with me was to try to keep us from presenting the indictment against his client in September.

Mr. CHERTOFF. What about you, Ms. Casey? Did you tell Mr. Coleman that he could pick up the phone and call Jack Keeney in Washington?

Ms. CASEY. No, sir, I did not.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Casey and Mr. Johnson, Mr. Nathan in his deposition before the Committee stated, "I thought what the U.S. Attorney's Office was doing"—as I understood it, this is with respect to Coleman seeking immunity or misdemeanor plea prior to

giving the proffer, and he said, "I thought that what the U.S. Attorney's Office was doing as I understood it was quite appropriate, that there was no sense in buying a pig in a poke, that if you wanted to make a proffer up front, then they could deal with it.

"In any event, as I understood the facts, the SBA allegations against Judge Hale were unrelated to this proffer and the U.S. Attorney's Office believed it had a very strong case against Judge Hale on that issue. And I thought they were well within their rights to be insisting on a felony plea in that matter."

That's Mr. Nathan. Now, Mr. Carver in his deposition here says, "Step one in the process is Hale proffers and he proffers with leaving us free to use the fruits, but not necessarily the admissions. And that's pretty fundamental in dealing with someone who is trying to negotiate a disposition less than what you need to go into court or think you can go into court and prove. So to the extent that they were insisting on a comprehensive proffer from Hale that was exactly the right thing to do."

The question was then asked, "And what's the reason for that? "You don't buy a pig in a poke." Were you both trying to avoid buying a pig in a poke in this matter?

Ms. CASEY. Senator, that's exactly what we were trying to do.

Senator SARBANES. Mr. Coleman actually was trying to use the press—did you perceive him trying to use the press to put pressure on the office to accede to some deal with him that would be unjustified?

Ms. CASEY. I absolutely felt that way, and it also undermined my confidence in whether his client actually had any information of value to proffer. I felt that if he had something that was useful to the Government, he would pursue the normal procedure rather than trying to manipulate the situation through the press.

Senator SARBANES. Actually, Mr. Coleman started with the immunity or a misdemeanor. You all insisted on a felony plea.

Ms. CASEY. Yes, sir, I did. That was—that may have been a——

Senator SARBANES. In the end, he pleaded to two felonies, did he not, with Independent Counsel Fiske?

Ms. CASEY. He did, Senator, and I felt then and I still feel that it would have been wrong for me to mislead Mr. Coleman into thinking that I would ever be willing to immunize his client, which would have destroyed Mr. Hale's value as a witness, or to mislead him into thinking that a misdemeanor would ever be an appropriate disposition for that case.

I would have been negotiating with him in something less than good faith because I did feel then, and I still feel now, that a felony was the proper disposition.

Senator SARBANES. Mr. Kravitz.

Mr. KRAVITZ. Thank you, Senator Sarbanes.

Now, Mr. Jackson, you testified that, at least by the summer of 1993, from your investigation or your analysis of your investigation, you became aware of at least a theoretical possibility that this investigation could lead to Governor Tucker or possibly even to President Clinton. At any time after you recognized that theoretical possibility, did Ms. Casey or anyone else ever do anything to discourage you from following your investigation aggressively?

Mr. JACKSON. I had no interference whatsoever from day one to then.

Mr. KRAVITZ. Did anyone ever ask you not to follow that investigation down any particular road?

Mr. JACKSON. I was basically left alone to do the work.

Mr. KRAVITZ. Did you follow that investigation aggressively?

Mr. JACKSON. We were—let's see. We did—the Hale indictment, you know, was done, was working on another indictment on Hale, was trying to put together the essentially what—the indictment the Independent Counsel came out with in August of this year, trying to put it together. Probably it wouldn't have been long before we would have had Hale and McDougal both indicted, so, you know, it was going on down the road.

Mr. KRAVITZ. Mr. Wayne Foren of the Small Business Administration testified here earlier this week and stated that the 4½-month period between the time of the initial referral in the CMS/Hale case in May 1993 and the time of the indictment in September 1993 was extraordinarily fast for indictments in SBA cases. Is that consistent with your experience?

Mr. JACKSON. That indictment did not come from the referral. The indictment came from information that I had gotten from a law firm, plus Walter Peterson at SBA, and we had a statute of limitations problem by using the SBA statutes, which meant that the last available grand jury to do it would be in October.

Since I didn't want to take a chance of making mistakes, I was going to do it a month or two earlier so I could redo the indictment if I made errors. So that was the reason—I mean, we were given this thing on a silver platter by a law firm and Mr. Peterson of SBA, but you had to act on it fast if you were going to use the SBA statutes.

Mr. KRAVITZ. Ms. Casey, I think it's fair to say that the implication or at least the implication was left this morning during Mr. Coleman's testimony that you and others in your office were reluctant to receive information from his client that might implicate either Mr. Tucker or Mr. Clinton. Is that true?

Ms. CASEY. No, that's not true. What I was reluctant to do was to take an action that could damage the investigation if it led to other places. Randy Coleman came over and asked for immunity or a misdemeanor for his client. He was a defense attorney. There was nothing wrong with him asking for that. He was attempting to represent his client. The thing that would have been wrong would have been for me to give him what he asked for, and I didn't.

Mr. KRAVITZ. When you met with Mr. Coleman in early September 1993, did you make it clear to him that you were ready, able, and willing to accept a proffer from his client?

Ms. CASEY. I certainly attempted to do that, but my meeting with Randy Coleman in early September was very brief. There was no one at that meeting except for Randy and me. He stayed for such a short period of time that I didn't call anyone else in.

Mr. KRAVITZ. On September 20, 1993, you wrote in a letter to Mr. Coleman the following: "Our position is as we have stated to you before. That is, we are fully interested in all information your client has to offer." And again in a letter to Mr. Coleman dated just the next day, September 21, 1993, you stated, "In short, we remain

willing to hear what your client has to offer at such time he decides that he is ready."

Are those two statements in those two letters consistent with your memory as to your availability to receive a proffer from Mr. Hale if Mr. Hale had been willing to provide one?

Ms. CASEY. Yes, they are.

Mr. KRAVITZ. Mr. Jackson, when you met with Mr. Coleman in August 1993, did you invite Mr. Coleman to have Mr. Hale provide a proffer?

Mr. JACKSON. We didn't get that far. Essentially, Mr. Coleman, if I recall the conversation correctly—OK. It goes back further. Mr. Coleman was not the first attorney to show up. The first attorney was Mr. Price, who used to work with Mr. Coleman—as a matter of fact, I used to be in the same law firm before Mr. Coleman—and Mr. Mays.

At that time Mr. Mays asked for pretrial diversion. I said no. The next time was Mr. Price, Mr. Coleman. Mr. Price asked would we please seal the indictment, and I told him we couldn't do it without some good excuse.

Then Coleman came back, and if I recall, that was the conversation when we were talking about the paths and so forth, but if I recall correctly, what Randy asked for was a misdemeanor. I told him that there were no misdemeanors that would fit the facts.

That was pretty much the—I did tell him—I heard some of his testimony this morning. I did tell him that anything that I did would have to be approved upstream, that I would have to go to the U.S. Attorney and First Assistant for any approval of any plea that I might do. That was essentially the end of Fletcher as far as any dealings with Mr. Coleman.

Mr. KRAVITZ. Mr. Johnson, in your experience as a Federal prosecutor for the past many years, is it your general practice to require defendants to provide proffers before the plea bargain is actually struck?

Mr. JOHNSON. Yes.

Mr. KRAVITZ. Let me ask you, is that not only your general practice but the general practice of most Assistant U.S. Attorneys you're familiar with?

Mr. JOHNSON. It is the general practice of most Assistant U.S. Attorneys, and I know, from teaching with the Department of Justice, it is the policy of the Department of Justice and it is the advocated approach of the Department of Justice.

Mr. KRAVITZ. Why is it that it is important to require that a proffer be provided before a guilty plea is agreed upon?

Mr. JOHNSON. Well, it makes simple sense. If part of the guilty plea of the person who is going to plead guilty is providing you evidence that is useful in any other prosecution, you want to know what that is. Now, if a person is just going to go in and plead guilty straight up to what they have been charged with and not provide evidence, it's not, of course, considered. But if you are considering using that person as a witness, it seems to me fundamentally logical, you want to know whether that person has anything useful, and you also want to know whether—if that person has something that is useful, whether it can be corroborated, the extent to which it can be corroborated, in order to enhance that person's credibility,

which, of course, will always be a subject of attack if that person does take the witness stand in court.

So it's very, very critical to know those things and know them early before you agree to give something in exchange for them. The extent to which you agree to give something in exchange.

Senator SARBANES. On that very point, Gerald McDowell in his deposition here, the Chief of the Fraud Section in the Department of Justice, was asked:

Question: Did you conclude that the U.S. Attorney's position was the appropriate one in demanding that a proffer be made prior to entering into plea negotiations?
Answer: Yes.
Question: And could you elaborate on that?
Answer: Well, I think whenever the Government prosecutor is so eager to make a deal that they give immunity or they take some kind of—take an irrevocable position before they find out what the other side is going to give them, they completely ruin the incentive for, basically, a criminal to be candid with them after the deal is made, and they often overplay their hand. They give away much too much when they do not have to, and they may find out the only story the person has to tell is the person is criminal. The rest is just smoke and there is nothing they can do about it.

Mr. JOHNSON. That's exactly right.

Senator SARBANES. Continuing:

Question: So the purpose to get a proffer is to be able to dispassionately evaluate the information that the subject of the investigation is offering to provide to determine whether it is valuable?
Answer: Right.

Mr. JOHNSON. I agree with that.

Mr. KRAVITZ. Mr. Johnson, I think a related point—you mentioned earlier that one of the concerns that any prosecutor would have in this type of situation is the idea that this defendant who seeks to become a cooperating witness would ultimately be a witness for the Government in a prosecution of someone else.

Mr. JOHNSON. That's correct.

Mr. KRAVITZ. Am I correct that one concern of the prosecutor in such a case would be how believable or how good a witness this defendant turned cooperating witness would be in that future trial?

Mr. JOHNSON. Absolutely.

Mr. KRAVITZ. In light of that, does that make it more important for the Government to insist that this defendant about to be turned cooperating witness plead to a more serious charge such as a felony rather than a misdemeanor or perhaps even be given immunity?

Mr. JOHNSON. That varies in the cases, but certainly in a case of this kind, if we apply this to what we are talking about here with Mr. Hale, a Sitting Judge accusing some of the people that he claimed to the media he could have information about, to be a witness and have been given too lenient of a deal with the Government was, in my view, killing the investigation, killing any hope that you could effectively use that person or any information he might provide to prosecute other people. It was a death knell to the investigation.

Mr. KRAVITZ. Now, the reason for that is that if Mr. Hale got too good a deal, anyone he later testified against could argue persuasively, probably, that Mr. Hale was lying because of the deal he had gotten?

Mr. JOHNSON. Exactly. It has happened in many criminal cases that way.

Mr. KRAVITZ. Ms. Casey, we heard testimony this morning that at some point Mr. Coleman suggested to members of your office that Mr. Hale might be available to work in an undercover capacity. What's your understanding as to what capacity Mr. Coleman had in mind Mr. Hale working in and what's your analysis of the likelihood that Mr. Hale could work successfully in an undercover capacity?

Ms. CASEY. Mr. Kravitz, I would almost have to tell you that I don't have an opinion about that. The reason I say that is that since Mr. Hale was never willing to tell us what he knew, we were never able to evaluate his usefulness in any sort of a prosecution or an investigation. It's impossible to do absent his willingness to make his proffer.

Mr. KRAVITZ. Let's just assume for point of discussion that Mr. Coleman had come forward and had actually provided some details of some scheme through which Mr. Hale could act in an undercover capacity. Was there any likelihood that Mr. Hale could do so successfully in light, first, of the fact that there had been a search warrant executed at Mr. Hale's office in the middle of the day back in July 1993? Second, and perhaps more important, in light of the fact that Mr. Hale had spoken at length with the press about his allegations?

Ms. CASEY. Yes. Not only that, but the Small Business Investment Corporation at that point was in receivership, a civil litigation that was also a matter of public record.

Mr. KRAVITZ. So in light of all of those facts, what is your sense as to the likelihood that any such undercover operation could have been successful had Mr. Coleman come forward and given you some specifics?

Ms. CASEY. My feeling is that there would have been great difficulty.

Mr. KRAVITZ. Mr. Jackson, do you agree with that?

Mr. JACKSON. I can definitely agree with the answer. The copies of the indictment were furnished to the attorney for Mr. Matthews, who was a co-defendant of Mr. Hale. That same attorney was also the attorney of Jim Guy Tucker. Also, the other people upstream would have known all about this, so it was all out on the table.

Mr. KRAVITZ. Is there any likelihood that Mr. Hale could have had some conversation with Governor Tucker?

Mr. JACKSON. He could have a conversation with anybody. They would have already known that he was under investigation.

Senator SARBANES. Actually, the notion put forth by Coleman that Hale could be an undercover person was preposterous in the circumstance, wasn't it?

Mr. JACKSON. At that point in time it would be preposterous.

Mr. KRAVITZ. I want to ask a few questions about the subject of recusal in this matter. Mr. Johnson, you testified just a few minutes ago that one of the concerns you had when you spoke with Mr. Keeney on September 20, 1993, was that a recusal by Ms. Casey at that time, as the state of the record was at that time, would risk incapacitating the entire U.S. Attorney's office throughout the entire Clinton Presidency.

Mr. JOHNSON. Yes.

Mr. KRAVITZ. What did you mean by that?

Mr. JOHNSON. What I meant by that was this: My perception of David Hale, through his attorney's actions at that time, were as I outlined in my opening statement. They were intended to, as I saw it, scare us into not indicting him, as scheduled in September, by claiming—to the media, not to us, that he had important information about important people.

Well, as has been pointed out here, Arkansas is not a particularly large State. There were very, very many people that had had contact with now-President Clinton when he was Governor, and I felt that any kind of high-profile case we had, if we recused simply because Hale had claimed to the press something negative about the President, would lead and induce every high-profile defendant we had in any case to simply make that claim, knowing that would get our office out of it, and that there would be some delay between then and whenever the Department picked it up.

I saw this potential for significant abuse by making reckless allegations, and particularly in the context of nobody taking the time to check out whether there was any worth to them, and that was my feeling. That is why I don't feel I was wrong at the time, and today do not feel I was wrong, in advocating an assessment of the information prior to a decision about recusing.

Mr. KRAVITZ. Ms. Casey, relating to the subject of recusal, between mid-to-late September when this issue first arose for you, or when you first discussed it with others, and the time that you actually recused yourself—I believe that was on November 5, 1993?

Ms. CASEY. That's correct.

Mr. KRAVITZ. Between—in that period of time, did you take any actions in the Hale matter?

Ms. CASEY. Did I take any actions in the Hale matter?

Mr. KRAVITZ. Right.

Ms. CASEY. No, the Hale matter was being handled by Fletcher Jackson and Michael Johnson.

Senator SARBANES. Let me just ask. In fact, it didn't make any difference whether you had recused yourself earlier or when you did, as it turned out, did it?

Ms. CASEY. It didn't make any difference?

Senator SARBANES. No, I mean the Hale case was eventually picked up by the Department of Justice and eventually by Fiske, and in fact he was then indicted. In addition, he pleaded to two felonies, something, from the very outset, Coleman would not entertain in the discussions with you. In fact, I think your bottom line was one felony, was it not?

Ms. CASEY. Yes, sir, it was.

Senator SARBANES. He wouldn't entertain that at the time, as I understand it.

Ms. CASEY. That's correct.

Senator SARBANES. And also wanted a plea before he had to proffer; is that correct?

Ms. CASEY. That's correct.

Senator SARBANES. And had you done that, you would be being sharply criticized, I think right here and now, for having done that as a matter of fact.

Now, you met when you came up to Annapolis for the briefing for the new U.S. Attorneys with the people at the Department of

Justice. At that point, they indicated to you, I take it because of appearances, that they felt that you should recuse yourself; is that correct?

Ms. CASEY. Yes.

Senator SARBANES. Let me ask you a question, because it was asked of Mr. Keeney. Did you feel that your integrity was being questioned by the request that you recuse yourself when it was first thrown at you?

Ms. CASEY. That my integrity was being questioned?

Senator SARBANES. By Coleman when he first put that to you.

Ms. CASEY. No, Senator, I didn't feel that he was questioning my integrity. I just thought that he was being a defense attorney and trying to represent his client.

Senator SARBANES. Well, Mr. Keeney said that you were offended by it, and:

> As I think she explained it, she said she was perfectly capable of handling this matter, and my pitch was not that she couldn't but the perception was wrong if she stayed there.
>
> *Question:* From the standpoint of your experience with the Department, it is not unusual, is it, for a U.S. Attorney who is put in such a position to react more or less in the same way as Ms. Casey, particularly a new U.S. Attorney?
>
> *Answer:* Yes, I have had other U.S. Attorneys react similarly. They are offended by the idea that they can't be fair or the suggestion that they can't be fair.

Was that at work here, do you think?

Ms. CASEY. I can certainly understand why Mr. Keeney answered the question in that way. But, at least in retrospect, my feeling is that I was offended by the notion that Mr. Coleman could somehow circumvent the normal process, the process that we use day in, day out with every defendant, the normal course of business, that he could somehow circumvent that by making allegations to the press. I felt that it was important to continue to follow the normal procedure, which is what we did.

Mr. KRAVITZ. Just one other question on the subject of the plea negotiations. Again, Wayne Foren from the Small Business Administration testified earlier this week that the case involving Mr. Hale and Capital Management was among the most extraordinary cases of fraud involving the SBA that he had ever seen in all of his years of experience.

Going along with that, some of the career officials at the Department of Justice, including Mr. Gangloff the Deputy Chief of the Public Integrity Section, I think he described the proof in the case as a cookie cutter case, meaning that it was easily proved, it would be easily proved if the case had gone to trial. In light of those two factors, an extraordinary amount of fraud and an easily proved case, is this the type of situation, Ms. Casey, where the prosecution has a strong motive to be generous in plea negotiations?

Ms. CASEY. To be generous? No, I think that's not true. I felt a very strong obligation and responsibility to represent the United States, which is what I have promised to do. There was a case of fraud involving taxpayer money, and I felt that it was my obligation to try to make right what was wrong.

Mr. KRAVITZ. That's why your office refused to give immunity or a misdemeanor plea, and refused to give any plea in the absence of a factual proffer up front, and instead came down with a prompt indictment?

Ms. CASEY. For that reason and also because of my reluctance to do something that could damage further investigation.

Mr. KRAVITZ. Mr. Cole.

Mr. COLE. Thank you, Mr. Kravitz.

Mr. Jackson, I would like to direct your attention back to 1992, if I could, to the fall of 1992. Do you recall that the RTC submitted a criminal referral on Madison Guaranty Savings & Loan to the Little Rock U.S. Attorney's office in September 1992?

Mr. JACKSON. Right. I don't know if it was in September. First time I think I saw it was in October.

Mr. COLE. Did you review the referral and its exhibits?

Mr. JACKSON. I reviewed the referral through about three, possibly four, times. I may have thumbed through the exhibits. At that point in time it was only about a year later before I really went through the exhibits, but I think at that point in time, I didn't—I just looked through the exhibits to see if they would support what was in the referral. But I think I read the referral through at least three or four times that day, that morning.

Mr. COLE. Who asked you to review the referral?

Mr. JACKSON. The then U.S. Attorney, Mr. Banks.

Mr. COLE. What did you tell Mr. Banks after you had completed your review?

Mr. JACKSON. Mr. Banks' first question was about the statute of limitations. I told him about FIRREA, with that 10-year extension that the statute of limitations was no problem. He asked me what I saw, and I told him basically what I saw was an in-house check kite by James McDougal, potentially his wife Susan McDougal was involved, and potentially there was a lady that worked for Mrs. McDougal that wrote some of the checks. These involved a bunch of accounts which had a bunch of, you know, well known names attached to them.

I think I told him we would have to do some further work, that you would have to take—Ms. Lewis had only taken the kite up into, I think, about October 1985 or so. You were going to have to take it on into 1986 to see if there was a loss, other than the interest lost on the money. Then when I finished that, I started telling him that I wouldn't do it because of the prior acquittal. In other words, you would get the prior acquittal—the prior acquittal would be used against you to make this look as a vindictive prosecution.

Mr. COLE. That's the prior acquittal of Mr. McDougal?

Mr. JACKSON. Of Mr. McDougal. When Mr. McDougal was acquitted the first time, as I said in my deposition, he was not a very gracious winner. He went on to accuse the U.S. Attorney's Office of a political vendetta, a witch hunt. He went a little bit further. He said that Mr. Banks had prosecuted him for this reason: That years ago, Mr. McDougal had run for Congress against J. Paul Hammerschmidt, the Republican Congressman, that when Republican Congressman Hammerschmidt's buddy George Bush got to be President, Hammerschmidt had Bush put Banks into the U.S. Attorney's Office for no other reason but to get Jim McDougal. He got down on a personal level and trashed the U.S. Attorney's Office, you know, one way or the other for having prosecuted him, and having lost.

You were going to get hit with that, and if you lost—and that was not—that in-house check kite is not a very exciting case, and you probably would lose it. Then the newspapers were going to be on you for why did you take a second bite at the apple with nothing no better than that.

So basically what I told Mr. Banks was we shouldn't do it.

Mr. COLE. You mentioned your deposition—in your deposition before the Committee, you made a statement. Do you have a copy of your deposition there?

Mr. JACKSON. No, but I remember. I have reviewed it.

Mr. COLE. At page 70—we can give you a copy if you need to look at this—you made the statement in describing the referral, and I will quote you, "I mean, from appearances, it's just McDougal taking care of McDougal and McDougal's corporations." That's lines 4, 5, and 6 at page 70. What did you mean by that statement, Mr. Jackson?

Mr. JACKSON. Basically when you got into Madison, what it appeared to be was that most of the manipulation that Mr. McDougal was doing was to make debt carrying. In other words, he was doing all of these fraudulent transactions in a sense in order to make his interest payments and principal payments on various debts that he had. And I wouldn't see that probably this check kite that he had was any different from what he was doing over in Castle Grand or Campobello, or any of the other transactions he was into. He would move money for one purpose over for another purpose.

Mr. COLE. Was there anything that you saw in the referral that led you to believe that the persons who were listed as potential witnesses, which of course included the Clintons, had any knowledge of what Mr. McDougal was doing?

Mr. JACKSON. There was nothing in the referral, and I do not know that there would be any reason that they would know under the circumstances. I doubt if anybody would tell you that they knew. I mean, you would not expect any of the people who were listed in her referral, as acknowledging that they knew what Mr. McDougal was doing.

Basically what Mr. McDougal was doing was just kiting between accounts at Madison, and the only connection to these people were that they were in the corporations for which this account exists.

Mr. COLE. I realize my time has expired. I only have one more question, Mr. Chairman.

The CHAIRMAN. Sure, go ahead.

Mr. COLE. I just wanted to refer you to another statement on the same page of your deposition. If you look down a few lines to lines 11 through 13, where you say, "McDougal's credibility is about in the same ballpark as David Hale's." As an experienced Federal prosecutor, what's your view of Mr. Hale's credibility?

Mr. JACKSON. The more you got into Capital Management Services, the problem became not to find a bogus transaction but to locate a legitimate transaction. Everything that he did was bogus, starting in about 1983. It became more and more obvious that the man through the years had become a crook. You have the same problem with Mr. McDougal. If you get into the McDougal transactions, you find the same thing, that the question is not what's bogus but what's real.

So you have two people here who may not, at this point in time, be able to distinguish between—they could probably pass a lie detector test but they probably could not distinguish between truth and falsity.

Mr. COLE. I take it that that perhaps influenced you in your dealings with Mr. Coleman as to whether or not you wanted to participate in the meetings with Ms. Casey and Mr. Johnson that we described earlier?

Mr. JACKSON. No, the reason for that was I just thought all they were doing were just stalling for time, that it was not going to go anywhere, that you were eventually not going to get anywhere until Mr. Hale was right at the lick log, which is where—he didn't get there until March 1994, when the judge wouldn't grant a continuance. So you were going to have to get him where he had nowhere to go.

Mr. COLE. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Jackson, I have to tell you that your testimony is refreshing. We have more people who can't remember anything, just sudden—I mean it's unbelievable, so when we have somebody like you who comes and says this is what I remember and this is what happened and this is the way I saw it taking place, you are absolutely refreshing.

On a Friday at 4:15 p.m., it's nice to have somebody that gives us a little pause to chuckle and say, you are refreshing and it's nice to see somebody who has carried on his job in the manner in which you have obviously conducted your own. Just let it hang out there, very nice, really. Just wanted to share that with you.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Jackson, I want to just go back to something you said at the beginning of your testimony and see if I can briefly just kind of run through this and put it in perspective chronologically.

You said to us earlier at the very beginning that when you got involved in this case and started to get involved in this case, and certainly as of the time Mr. Coleman came up in August, you had your own understanding, from looking at the cases, the case involving Madison, the case involving Hale, that if you were successful in following the path, you might—one branch of that path might go to Governor Tucker and one branch might go to former Governor Clinton. And I gather that was based, of course, on your review of the documents and the evidence, even before Mr. Hale came in.

I take it that was based in part upon the nature of the relationships, financial relationships, business relationships you had come to understand from examining the file as they existed between, for example, McDougal and Hale and Tucker, and even the former Governor, Bill Clinton; is that correct?

Mr. JACKSON. A lot of this had been in the newspaper. A lot of these transactions and so forth had been in the Democrat-Gazette and some of them—you know, for years, I've been doing other cases which had some relationship to all of this stuff. A lot of this stuff was out in—at least in a small number of people, you know, who had some knowledge that these transactions were out there.

In 1986, Borod & Huggins from Memphis came over and did a review of Madison. They laid out a lot of these connections. The only new thing, I guess, would be what Ms. Lewis laid out with regard to the check kite, but a lot of this stuff had been around for years.

Mr. CHERTOFF. So for years there was a lot of information out there if you knew where to look for it, indicating that these people, McDougal, Tucker, Hale were involved in a series of interlocking transactions which were crooked?

Mr. JACKSON. Nobody said they were crooked. We still don't know that, but——

Mr. CHERTOFF. Questionable?

Mr. JACKSON. Questionable.

Mr. CHERTOFF. Worth investigating?

Mr. JACKSON. They had connections, let's put it that way.

Mr. CHERTOFF. They had political connections?

Mr. JACKSON. You could have political connections, you could have business connections, but as somebody said one time, we are a very small place, and if you're going to do business with somebody, you're going to wind up doing business with people you know, I guess, so——

Mr. CHERTOFF. Here we are, I want to just get from this issue about the process of negotiating this plea. Now, Mr. Coleman offered, at least as of his letter of September 15, to give an informal proffer of Mr. Hale's information. That's what he described to us as an attorney proffer, right here in the letter.

Don't shake your head, Ms. Casey.

It says, the last paragraph on page 2, next to last paragraph of page 2, for instance, I have offered an informal proffer of Mr. Hale's information for evaluation of its quality and content but have received absolutely no interest in the process.

Now, do you know what an attorney proffer is, Ms. Casey?

Ms. CASEY. Mr. Chertoff, I was only shaking my head because I didn't have the letter. I was not shaking my head in disagreement with what you were saying.

Mr. CHERTOFF. I'm sorry.

Ms. CASEY. What was your question?

Mr. CHERTOFF. Do you know what an attorney proffer is?

Ms. CASEY. Certainly.

Mr. CHERTOFF. That's when an attorney comes in and says I'm not going to bring my client in to be fully interviewed, but I'm going to tell you in general what the client is going to say. That's a kind of a proffer that I assume your office takes from time to time in some circumstances; correct?

Ms. CASEY. Yes.

Mr. CHERTOFF. In response to this letter, did you pick up the phone and say come on in, Randy, let's have this informal proffer.

Ms. CASEY. I think I wrote a letter back to Randy in response to this letter. I don't believe that I called him.

Mr. CHERTOFF. Your letter back, which was the next day, said, "You made it clear to me that one felony would be as disastrous to your client as multiple felonies. Therefore, our plea negotiations are at an impasse."

Then you said, "If he wanted to come in, request a motion authorizing reduction in sentence, he could then make himself available to agents for questioning so that we can determine whether his proffer merits such a motion."

In essence, what you said is I don't want to hear your attorney proffer. He has to agree to come in and deal with us in terms of a reduction in sentence, and agree to sit down and be interviewed by agents, and that's the only way I am going to talk to him; is that correct?

Ms. CASEY. No, sir. In essence what I was saying to him was that it would be misleading for me to have told him that his client would receive immunity or a misdemeanor. It was inappropriate knowing what I knew.

I was willing to listen to Randy. That's why I was willing to have a meeting with him on September 7. He didn't proffer any information at that meeting. I think mostly because he was injured and didn't feel well, but I was available, I would have listened to it. But more importantly, even without that, I was willing to go to the next step, which was to make arrangements for his client to do what needed to be done, if he was serious about wanting to do a plea arrangement.

Mr. CHERTOFF. But what you were prepared to do was not to simply take him up on his initial offer to come in and make an attorney proffer to get the ball rolling, what you were prepared to do, in accordance with your letter of September 16, which is now part of the record, was to say that he would have to agree to an arrangement that would require him to plead guilty first and only get the benefit in terms of a motion for reduction of sentence; in other words not bargaining over the charges, but just bargaining over the sentence; and second, that he would have to come in and do a personal proffer, personally put his client up there to answer questions with some exposure that his client would suffer after the fact if in fact the deal didn't go through; isn't that correct?

Ms. CASEY. My letter may not be very artfully drafted, but I was willing to keep the ball rolling. What I was trying to do was get the ball rolling, and the way to get the ball rolling was to hear from his client under an——

The CHAIRMAN. Ms. Casey, let me say this to you, this letter is very artfully drafted. I suspect Mr. Johnson helped you draft it. Did you help her draft this, Mr. Johnson?

Mr. JOHNSON. Not this letter, no, sir.

The CHAIRMAN. Who helped you draft this?

Ms. CASEY. No one helped me draft this letter.

The CHAIRMAN. You sent this letter out on your own?

Ms. CASEY. Yes, sir, I did.

The CHAIRMAN. You didn't check with any staffers on it?

Ms. CASEY. I'm sure I must have talked to Fletcher and I may have talked to Michael about it. I wrote the letter.

The CHAIRMAN. I tell you it is very artfully drafted and basically says I am not interested in talking to you without saying that, but in the real world, as opposed to saying Counselor, if you want to come in and let us know and talk to us and tell us what you have, we will listen. At that point in time, whether—and by the way, you

see, I listened to Mr. Jackson. He is an old hand. He figured out, these guys are going to—they want to stall this thing off.

But this letter is very artfully written, and it really basically says we are not interested in listening to you. Now, regardless of whether you concluded that you would not get anything or anyplace or that you needed the indictment, after the indictment, things start to take place; right?

You know that now. You have been there for a while. After a person is indicted, as you get closer and closer to trial time, you begin to negotiate a little more. So when Mr.—may I see that letter he wrote?

When Mr. Coleman basically said that an indictment was imminent in his letter, and it's imperative that I hear from you at the earliest opportunity, he was really talking about himself coming in to talk to you and trying to convince you based on facts he could give you without presenting his client before Federal agents and putting his client in a situation where his statements could be used against him. And you basically made a determination that you were not going to take that route.

That is how I interpret this. I just share that with you.

Go ahead.

Mr. CHERTOFF. Ms. Casey, let me ask you this. Mr. Coleman then writes back on the 20th and he says, "We remain interested in plea negotiations," and that's the letter where he tells you not that he wants to do an undercover operation then, but that he had offered earlier to do an undercover operation.

And I think Mr. Jackson, you agreed that there was a point in time in August, wasn't there, where Mr. Coleman suggested possibly using Mr. Hale in an undercover operation, having to wear a wire or a recorder?

Mr. JACKSON. I don't know if it was in person or if it was on the telephone, one telephone conversation we had about Master Marketing, and it could have been in a telephone conversation. I think at some point in there—and he may not have known that I had already given the indictment out to the co-counsel, but I would—so he——

Mr. CHERTOFF. It was a real offer.

Mr. JACKSON. He may not have known this was out all over the world.

Mr. CHERTOFF. So Mr. Coleman made a sincere offer at the time, as far as you know?

Mr. JACKSON. I don't know if it was sincere or not, but I don't know that he knew that it was useless.

Mr. CHERTOFF. Let me also say, by the way, parenthetically, that it's far from preposterous to say that someone who has been even indicted can't do undercover work because I personally know of a number of cases where people have been arrested and in jail and come out and do undercover work, so it happens all the time.

Mr. JACKSON. Aren't you talking about a different class of people though? You're talking about some pretty smart cookies in the Governor and President and the rest of the people.

Mr. CHERTOFF. I guess it remains to be seen.

Let me conclude by asking you just——

The CHAIRMAN. I will note that Mr. Jackson indicated to Ms. Casey back in August that indeed Governor Tucker was a potential target. You did indicate that, and I will have it read back, so——

Ms. CASEY. Yes, he did.

The CHAIRMAN. That is what brings us back to the point. You have an experienced pro like Mr. Jackson who can say to the outgoing U.S. Attorney who obviously relied on him, listen, don't go a particular route, look at the time, right before an election, that will be suspect.

Number two, this person, you are going to charge him with basically the same kind of crime that he was charged with last time and cleared.

Number three, you are not going to be able to bring this thing to any successful prosecution between now and November, so it is going to be absolutely terrible. Gave him some good advice.

When he told you that the Governor was a potential target, that must have carried some weight, didn't it?

Ms. CASEY. Certainly. I relied on Mr. Jackson. That's the reason I left the investigation in his hands.

The CHAIRMAN. That's why we have difficulty understanding why you, with this knowledge, did not recuse yourself, which obviously, I think you would admit at this time you wish you had done earlier. That's what led to this questioning. I just wanted to share that with you.

Mr. CHERTOFF. I'm almost done. If you want me to, I'll wait.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Ms. Casey, I have to say to you that if there is any artful drafting of letters here, it's my view that they are Mr. Coleman's and not yours. Now, let me just read, because the Chairman referred to it, but I think in all fairness to you, I ought to read the entire letter.

This is the letter of September 16:

> Dear Randy, this letter is in response to your letter of September 15, which was hand delivered to my office, which I looked at very carefully and which I think he's pulling out all the stops on that I think to try to lean on the U.S. Attorney's Office as best he can.
>
> My recollection of our meeting on September 7 is that I told you that I would not consider granting immunity to your client, nor would I consider filing only misdemeanor charges. You made it clear to me that one felony would be as disastrous to your client as multiple felonies; therefore, our plea negotiations are at an impasse.
>
> I did tell you that if Mr. Hale was willing to offer substantial assistance in the prosecution of other defendants, I would consult with my litigation Committee about requesting a motion authorizing a reduction in sentence. The motion to reduce sentence comes only after plea of guilty to felony charges.
>
> If your client is interested in cooperating in exchange for such a reduction, he must make himself available to Federal agents for questioning so that we can determine whether his proffer merits such a motion. I will be pleased to arrange such an interview at your earliest convenience. The fact that I am not willing to enter into any other agreement with Mr. Hale should not be construed as reluctance on my part to prosecute any individual when the situation merits prosecution.

Now, Coleman went back and forth at you all, and then on the 20th, you sent him a letter. I'll just quote from that:

> Our position is as we have stated to you before, that is we are fully interested in all information your client has to offer. Because of his significant involvement in criminal activity, it is unacceptable to us to grant him immunity. We are willing to provide your client with a motion authorizing reduction of sentence for substantial assistance.

And so forth.

We are going to have a lot of people from the Department of Justice in here on subsequent panels, but I have looked through their depositions, and I have seen none of them—these are career people—who feels that this was not the proper way to handle this. That in effect, the refusal to give him the plea before the proffer and the insistence on the felony charge—and we'll have these career people in, I guess, on Monday and Tuesday—but this course of action has been in effect sustained or validated up the line within the Justice Department.

So I think that I don't want either you or Mr. Johnson or Mr. Jackson to go away from here today, on the basis of this questioning, feeling in any way that you hadn't acted in a proper manner, and that's the judgment that's been passed by career people in the Department.

Mr. COLE. Thank you, Senator Sarbanes.

Mr. Jackson, I wanted to ask you a couple of questions about the earlier stages of your Hale investigation. When did you begin investigating the Hale matter?

Mr. JACKSON. I think I essentially began with the referral, and I think we got it—it was some point in June. We weren't able to go public with it because apparently the FBI had some other investigation going from the East Coast which involved Mr. Hale. So we went down to Dallas to the examiner's office, and it was not until July that we did the search warrant.

Mr. COLE. Then you had the search warrant for Mr. Hale's offices executed in July?

Mr. JACKSON. In July, probably toward the end of July.

Mr. COLE. Then it was shortly after that, I believe you testified, you prepared a draft indictment; is that correct?

Mr. JACKSON. What I did, I called—when I was down in Dallas one time, I spotted some records down there, and then from what I saw there, I came back and called after the search was done. I didn't want the FBI to get mad at me for telling anybody.

So I called the law firm and asked them did they have some documents on a particular transaction. And they not only had the documents, they had everything diagramed, everything in a nice, neat package. I went down there and picked that up the day after the search. Then I called Walter Peterson at SBA, and he told me about a letter they had up here, which meant that Hale lied on the source of funds. So then I sat down and drafted an indictment and had it done before the attorneys ever came in.

Mr. COLE. There's been some attention devoted to what you did with that draft indictment. Did you send a copy up to the SBA?

Mr. JACKSON. Yes, I sent a copy I believe to Mr. Peterson, and what I was wanting to do was to make sure that SBA was in agreement, that they would stay with the program and consider this to be a fraud. I've had some bad experiences with other agencies, where you think you have a fraud case, and then they will tell you, oh, the person could have done this, you know, even if they—one of them was where the guy went to the trouble to lie when if he had told the truth, he would have still got the money. I wanted to make sure that SBA was on board, that you couldn't do a circular transaction like this and leverage money.

Mr. COLE. That was the purpose of your sending the draft indictment up here to Washington?

Mr. JACKSON. Right.

Mr. COLE. You weren't trying to give a heads-up or tip anyone off in Washington about that?

Mr. JACKSON. No, I was trying to make sure they were in support of my theory of the case. In other words, I didn't want to do an indictment and later have SBA come in and say, oh, that's all right, you can do what Mr. Hale did.

Mr. COLE. Thank you. Mr. Kravitz.

The CHAIRMAN. No, you still have time, so if you are going to finish an area——

Mr. KRAVITZ. Thank you, Mr. Chairman.

Mr. Johnson, did you ever have any conversations with Special Agent Steven Irons from the FBI office in Little Rock about his concerns that the 1992 criminal referral in the Madison case may have been timed conveniently to come shortly before the Presidential election?

Mr. JOHNSON. As I recall, Special Agent Irons did express that view to me at one time or another.

Mr. KRAVITZ. What do you recall Mr. Irons stating as the bases for that view?

Mr. JOHNSON. I don't remember very specifically what he indicated his basis for that was. I know that the conversations—let me put them in the context of the conversations as I remember them.

Agent Irons was, as Ms. Casey said earlier, in charge of the squad at the FBI responsible for conducting white collar crime investigations in the entire State of Arkansas. Agent Irons was very interested in going forward in a very assertive manner with a number of investigations.

There had been a number of savings and loan institutions that had failed in Arkansas during the 1980's as there had been in other States in that region. Many of those were much larger and had a much more significant impact financially on the State of Arkansas than Madison Guaranty. It was not considered, as Mr. Irons saw it, one of the more significant institutions.

He was very frustrated and expressed to me his great frustration that we had never received any referrals from the RTC concerning the other institutions about whom there had been or from which there had been allegations of suspicious transactions. He was very anxious to get to work on those. And he felt that the concentration, as he expressed to me, of the RTC on Madison just prior to the 1992 election was extremely suspicious when in fact he had been requesting them to attend to other institutions and hadn't got referrals.

Mr. KRAVITZ. We heard testimony the other day when Ms. Lewis was here about the First Federal Bank and Savers Savings Bank of—I think both in Little Rock.

Mr. JOHNSON. Yes, First Federal, I'm not sure is in Little Rock. Savers Savings is, yes.

Mr. KRAVITZ. Were those two banks among the list, among the institutions that Mr. Irons had been hoping to receive referrals on?

Mr. JOHNSON. They were. In fact when our office recused from this matter, Mr. Irons had specific discussions with Ms. Casey and

me about implementing investigations concerning both First Federal and Savers Savings, and bypassing any reliance on RTC referrals by going straight to Federal Home Loan Bank Board audits. We had gone so far as to assign those cases to people inside the office.

He was selecting agents and developing a strategy by which to pursue those S&L investigations, which essentially came to an end because virtually all of Mr. Irons' squad was assigned to the Whitewater investigation, and there were no agents to devote to those matters.

Mr. KRAVITZ. Now, my understanding is that, as of 1992 and at least up to the fall of 1993, the FBI was not able to open an investigation of a failed S&L without a referral; is that correct?

Mr. JOHNSON. I don't know what the FBI policies were about opening investigation with or without a referral. It was certainly not our policy at the U.S. Attorney's Office that we needed a referral in order to conduct an investigation, and I had been personally involved in investigation of the largest S&L institution to fail in the State of Arkansas, which was First South. That entire investigation was conducted and prosecuted without ever receiving a referral from the RTC.

Mr. KRAVITZ. But I think what you've testified to is that because of the frustrations that Mr. Irons and others had with the RTC's failure to provide criminal referrals in First Federal and Savers Savings and other big cases, you and Mr. Irons and others discussed the wisdom of perhaps bypassing the RTC altogether in these cases?

Mr. JOHNSON. The problem—it was not so much a problem that we needed a referral. The difficulty was that by that time, in the 1990's, the RTC had taken possession of all the records. And unless you could get the RTC to give you access to the records, the most logical way to approach assessing the information you could not get to because the RTC had it in some warehouse outside the State of Arkansas, and you had to go through them to get the records.

Mr. KRAVITZ. Thank you.

The CHAIRMAN. Let me ask Counsel, are you aware of any prosecutions of First Federal, did any take place?

Mr. KRAVITZ. I'm not.

The CHAIRMAN. Well, you see, we do know that as a result of the efforts of Mr. Jackson and others there have been indictments that have resulted tangentially or otherwise in looking into the Madison situation. I don't know whether at First Federal—if you are going to say you have to look at it because there are massive losses—there was criminal conduct. I have heard this several times. No one has told me. Mr. Johnson, are you aware of any criminal activity that has ever been proved at First Federal?

Mr. JOHNSON. I'm aware of an RTC referral that was sent to our office last spring regarding First Federal in which the RTC claimed that there was more than $8 million fraud, that the time the RTC sent us the referral, the dates that were referred to in the referral mostly were beyond the statute of limitations. We had less than 3 months to do an $8 million fraud investigation before all of the statute of limitations ran out. When I contacted the RTC to get immediate access to the documents, they indicated to me they did not

have them because they had dispersed them throughout the country when they sold off the loans.

The CHAIRMAN. Jean Lewis didn't do this.

Mr. JOHNSON. Jean Lewis, as I understood it, was the investigator for all the matters in the State of Arkansas until she left the RTC, and then her responsibilities were undertaken by someone else, so——

The CHAIRMAN. So the theory——

Mr. JOHNSON. —the referral came under someone else's name, but I do not remember who it was.

The CHAIRMAN. I wonder if we are implying that if a person is working on another matter, and there is no one else or there are insufficient resources to cover it, that person is responsible for the failure to prosecute other cases. I think that is a pretty high burden to place even on Ms. Lewis, as much as we may like her or dislike her.

Mr. Chertoff.

Mr. CHERTOFF. I am really left just struck by two things. One is Ms. Casey, as of September 24, Mr. Keeney had suggested you recuse yourself because of the nature of your relationship with Mr. Tucker. You had a discussion with the FBI where you yourself acknowledged you should recuse yourself. Yet it takes you until November 5, thereabouts, early November, when finally in a meeting, that I gather you found somewhat unpleasant, at the Department of Justice, that you finally take the plunge. I guess the question is, how strong did the evidence have to be against Governor Tucker before you finally felt you had to take yourself out of the case?

Ms. CASEY. I don't know that I can quantify that. But I think the important thing is not when did I recuse, but did I do anything to impede or hinder the investigation that was ongoing, and the answer to that is no.

There were several things that I was concerned about. One was the issue of recusing in the matter of David Hale. I had no basis for recusing in that matter. Second, there was the question of how a recusal would be structured. If I recused in a matter involving Governor Tucker, there was the question of to whom would I recuse. Normally, in many situations, a U.S. Attorney, as you know, recuses to the First Assistant. I had been in the office for a very short period of time, and I had concerns about recusing a very resource consuming type of investigation, and sort of bifurcating my office at a time when I really didn't have the office established and running.

Mr. CHERTOFF. See, but you had said to the agents in September—in fact you left the room when they started to talk about the substance of the case, didn't you? You said you were going to kind of step back a little bit.

Ms. CASEY. I had forgotten I did that until you showed me the memorandum during my deposition.

Mr. CHERTOFF. But it's true; right? You don't deny it?

Ms. CASEY. I don't remember it. I don't deny I did it, I just don't recall that I did.

Mr. CHERTOFF. So the question is yes, it's difficult to, it's hard to understand how to do it, but there's a whole—you are a new U.S. Attorney. You are brand-new. There's a whole Department of

Justice that deals with these things all the time. And this is really what boggles my mind. You get a case that, whether Mr. Jackson tells you or you learn it from Coleman or whatever, you have to know is one of the heaviest cases involving some of the most important people you may ever deal with in your career, potentially, and more than most U.S. Attorneys will ever deal with in their career.

Admittedly, through no fault of your own, you are inexperienced. There is no problem with that, but you have to look to people for guidance. Yet the thing which would be the most natural thing in the world in that circumstance, you pick up the phone and you say, you talk to the Executive Officer, Keeney or whoever, you don't do.

Then what happens is when Keeney, who has been around for ages, says look, for whatever reason, I think you ought to step away from this, you resist his advice. When you sit down with the Bureau and they kind of say look, we really think you ought to kind of step away from this, you resist their advice. And yet it's not as if you want to stay on the case to charge forward and make the case happen. What you want to do is stay on the case but you want to step back from the case, and frankly, I think maybe, I'm expressing my own uncertainty.

Can you give me any explanation of what is in your mind in this process you are undergoing of wanting to be in it but staying away from it? Why didn't you just listen to the experienced people at the Bureau? Did you know the FBI Director suggested that you recuse yourself?

Ms. CASEY. I did not know that until my House deposition in September 1995. I've never personally met the Director of the FBI.

But Mr. Chertoff, first of all, Mr. Keeney suggested to me, in that third week of September telephone call that we had, I have forgotten the exact date, that I should recuse from the David Hale matter. We are talking about the Small Business Administration fraud that Fletcher was prosecuting.

Mr. CHERTOFF. These were all connected——

Ms. CASEY. He suggested that I do that because someone at the Department of Justice had received an anonymous telephone call. That was the basis. These matters might have been all connected, but we didn't know that at the time. We didn't have that evidence together.

Mr. CHERTOFF. Didn't you say in your opening statement that you understood there was a connection between Madison and Hale? You just said that in your opening statement here.

Ms. CASEY. I said in my opening statement that Fletcher told me in August that his investigation, his further investigation of David Hale could lead back into Madison, yes.

The CHAIRMAN. And Jim Guy Tucker.

Ms. CASEY. But we had—when I sat down with the FBI on September 24, they did not suggest to me that I should recuse. They did not raise that issue. I raised that issue. I told them that because I wanted them to know where I stood.

Mr. CHERTOFF. But then why not do it?

Ms. CASEY. I might have left the room during that meeting. I do not remember that I did, but it would have been the right thing to do, so I hope that's what I did, if they in fact discussed Governor Tucker.

Mr. CHERTOFF. But why not—see, from the time we started this last year, the most extraordinary thing is a half recusal, a secret recusal, people who recused themselves kind of, but don't do it publicly. I have to tell you that during the 11 years I was at the Department, and when I was U.S. Attorney, it was very clear what a recusal was. You either recused yourself and you did it and that was it, or you didn't recuse yourself and you were in the case. But it wasn't like, oh, I'm going to do it maybe in a month, you know.

I have nothing further, Mr. Chairman.

The CHAIRMAN. Senator, do you have any questions?

Senator Grams.

Senator Sarbanes.

Senator SARBANES. Ms. Casey, Mr. Moscato, when we took his deposition, said she felt she was brand-new to the job, she hadn't done anything improper to date, or at all, was handling it well. She was a new U.S. Attorney, was there a reason for her to recuse. At the time you didn't—and of course Mr. Johnson was in effect counseling you that there was not a need to recuse; is that correct?

Mr. JOHNSON. Very much so, your Honor—excuse me not your Honor, Senator. I very much was urging and advocating that she not recuse at that time.

I think the difference that I am hearing here is essentially this. The issue of whether to recuse simply because a possibility has been laid out there that might happen in the future was, in my view, premature. We never had any information until the referrals arrived in late October 1993, that could be tangibly looked at and said there is a basis for recusal. We were talking only about possibilities.

The difference—not even the Independent Counsel Act which requires the Department to follow the Independent Counsel procedure, says the Department is supposed to leave as soon as there is an allegation. In fact, the Independent Counsel Act imposes upon the Department an obligation to do a preliminary assessment. That is a standard that I was using. That is a standard I was advocating that Paula use. That is the process that I felt was ongoing.

Obviously, given this juncture, with all the criticism that Ms. Casey has taken, it would have been far more pragmatic in the middle of September to say run, leave this problem to somebody else. That is not what I felt we should do. I felt that we should attempt to get the information to see that an effective investigation was done. And if, in fact, the issue came up where there was something worth investigating that would cause Paula to recuse as a personal matter, I discussed with her the potential of recusing to me because I had no basis to recuse on any of these people on any of these investigations.

Senator SARBANES. Well, let me ask you this question. She didn't recuse and she remained on the scene. Did she in any way impede or seek to obstruct any investigations that you know about?

Mr. JOHNSON. No, Senator. In fact Paula Casey gave me completely free rein to do what I thought in my professional judgment should be done and not to do what I thought in my professional judgment shouldn't be done. She never in any way suggested that I structure the investigation to take any particular course. Those decisions were mine.

Senator SARBANES. Mr. Jackson.

Mr. JACKSON. She didn't interfere in any way with what I was doing. So I don't really think it made any difference whether she recused one week or the next week or whenever, and when she eventually did. I don't see any harm that occurred from, you know, from when that it occurred.

Senator SARBANES. All right. Thank you.

The CHAIRMAN. We have no further questions. I want to thank the panel.

We stand in recess until Tuesday morning.

[Whereupon, at 5:50 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Tuesday, December 5, 1995.]

[Appendix supplied for the record follows:]

Recap of fees from Madison Guaranty Savings & Loan
FINAL RECAP

1983 None

1984 None

1985 January - None

Feb./Mar/April '85
None

May '85

Baledge	Madison Guaranty	82.50
Massey	Madison Guaranty	695.50
S.Grimes	Madison Guaranty	260.00
Clinton	Madison Guaranty	840.00

June '85

Clinton	Madison Guaranty	60.00
Massey	Madison Guaranty/stock offering	186.00
Massey	Madison Guaranty/stock offering	819.00

July '85

D. Thomas	Madison Guaranty/Stock	90.00
Giroir	" " "	55.00
Masssey	" " "	1,391.00
Law Clerks	" " "	210.00
Clinton	" " "	144.00

Aug/Sept/Oct.'85
None

Nov. '85

Thrasn	Madison Guaranty/IDC	550.00
Thrasn	" " "	283.50
Thrasn	" " /Stock offering	155.50
Speed	Madison Guaranty/Stock Offering	32.50
Massey	" " " "	552.50

Dec. 85

Gary Garrett	Madison Guaranty/Stock Offering	585.00
Giroir	" " " "	100.00
Giroir	" " " "	225.00
Massey	" " " "	555.00
Massey	" " " "	437.50
Massey	" " " "	214.00
Clinton	" " " "	88.00
Clinton	Madison Guaranty	232.50
Donovan	Madison Guaranty/Stock Offering	90.00

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1986

January 86		
Donovan	Madison Guaranty/Stock Offering & IDC	568.75
Dave Thomas	" " " " "	262.50
Massey	" " " "	952.50
Massey	Madison Guaranty/Limited Partnership	165.00
S.Grimes	Madison Guaranty/Stock Offering	60.00
Clinton	Madison Guaranty/Stock Offering & IDC	2,731.25
Clinton	Madison Guaranty/Limited Partnership	62.50
Clinton	Madison Guaranty/Stock Offering	802.50
March 86		
Donovan	Madison Guaranty/IDC Stock offering	525.00
B.Arnold	Madison Guaranty/Stock Offering	80.00
April 86		
B.Arnold	Madison Guaranty/Stock Offering	236.00
Donovan	Madison Guaranty/Stock Offering	118.75
Clinton	Madison Guaranty/Stock Offering	12.50
Clinton	" " " "	262.50
May 86		
Clinton	Madison Guaranty	82.88
Clinton	Madison Guaranty/Babcock	1,050.00
Clinton	Madison Guaranty/IDC	70.00
Clinton	Madison Guaranty/General	197.12
Massey	Madison Guaranty/General	112.50
B.Arnold	Madison Guaranty/IDC	48.00
July 86		
Clinton	Madison Guaranty/General	56.00
Clinton	Madison Guaranty/Babcock	308.00
October 86		
Clinton	Madison Guaranty/Babcock Loan	84.00

1987

September 1987		
Clinton	Madison Guaranty/General	500.00

RLF2 03031

000104
Senate. Ltr.Req.

FSC
#31C

LAW OFFICES OF
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A PROFESSIONAL ASSOCIATION
120 EAST FOURTH STREET
LITTLE ROCK, ARKANSAS 72201
PHONE (501) 375-9131

99252

GUARANTY SAVINGS/LOAN
JOHN LATHAM, PRESIDENT
AND MAIN STREETS
LE ROCK, AR 72201

JANUARY 30, 19

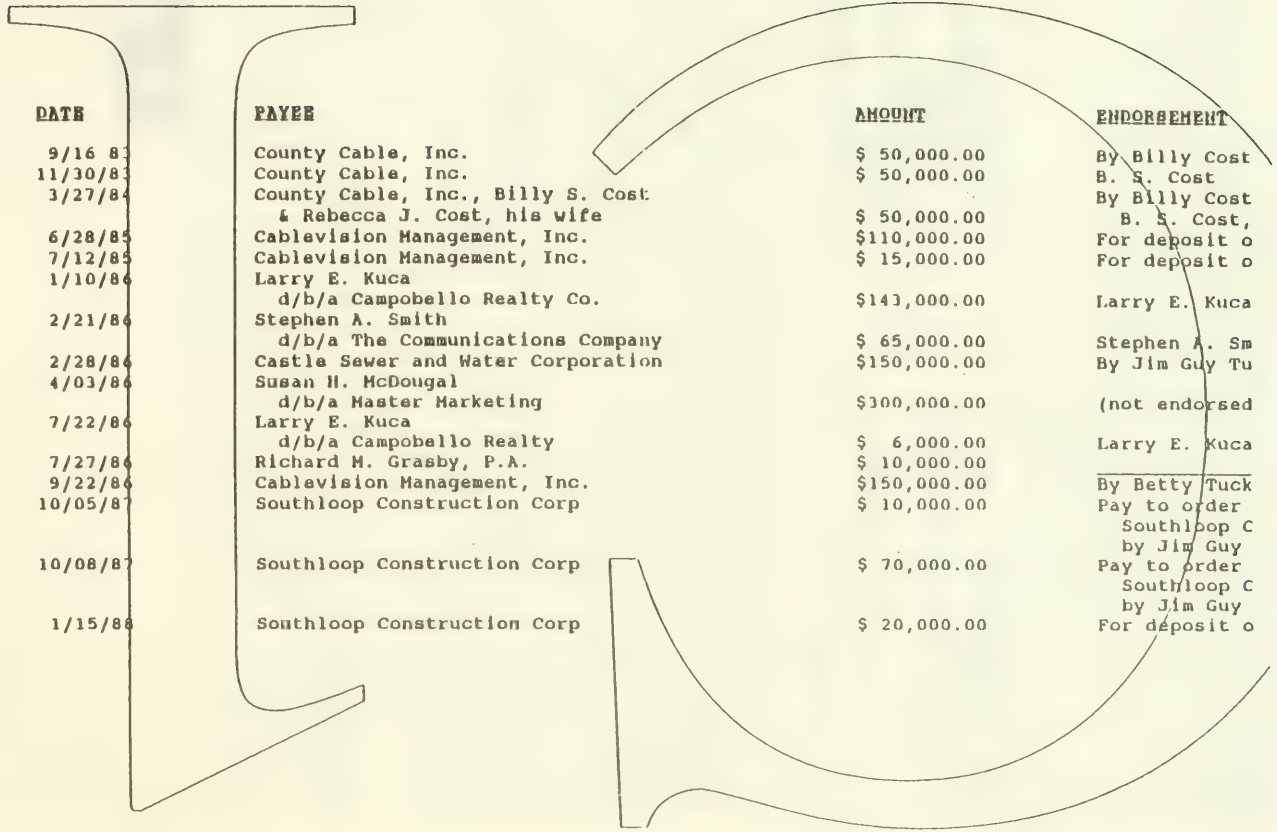
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FOR LEGAL SERVICES RENDERED THROUGH JANUARY 30, 1986 BY H. W. CLINTON, T. TW, SR, C. DONVAN, K. SMITH AND J. HIGGS:

MATTER: S - I.D.C.

REVIEW CONTRACT FOR SALE; TELEPHONE CONFERENCE WITH SETH WARD AND CHARLI COOK, DARYL DOVER, ALTON BOWEN AT BEACH ABSTRACT, PEGGY ROGERS AND STEVE WADE; MAKE CHANGES IN DOCUMENTS; REVIEW CHANGES IN AGREEMENT; CORRESPONDE TO ALL PARTIES; ATTEND I. D. C. BOARD MEETING; PREPARE CORPORATE RESOLUTIONS; REVIEW TITLE COMMITMENT; ATTEND CLOSING; REVIEW BILL OF ASSURANCES; MEETINGS WITH SETH WARD, BOB WILSON AND CHARLIE COOK; RESEARC ON WHAT APPROVALS, PERMITS, ETC., ARE NECESSARY TO OPERATE SEWER AND WATT FACILITIES; MULTIPLE TELEPHONE CONFERENCES WITH STATE AND COUNTY AGENCIES HEAD ABOUT UTILITY STATUS; CONFERENCES WITH SETH WARD REGARDING PURCHASE FROM BRICK LILE AND PROPOSED INDUSTRIAL DEVELOPMENT ON SITE; RESEARCH IN STATE LAW GOVERNING LIQUOR PERMITS; RESEARCH AT COUNTY CLERK'S OFFICE AN ELECTION COMMISSION; TELEPHONE CONFERENCES WITH ELECTION COMMISSION; NUMEROUS TELEPHONE CONFERENCES WITH DARYL DOVER

TOTAL FOR SERVICES	$4,651.50	
DISBURSEMENTS		
ONE COUNTY MAP		2.35
(XEROX COPIES)		16.50
DISBURSEMENTS TOTAL	$18.85	
TOTAL MATTER S:		$4,670.3



CHECK NO.	DATE	PAYEE	AMOUNT	ENDORSEMENT
1591	9/16 8	County Cable, Inc.	$ 50,000.00	By Billy Cost
1614	11/30/8	County Cable, Inc.	$ 50,000.00	B. S. Cost
1672	3/27/8	County Cable, Inc., Billy S. Cost & Rebecca J. Cost, his wife	$ 50,000.00	By Billy Cost B. S. Cost,
0288	6/28/85	Cablevision Management, Inc.	$110,000.00	For deposit o
0295	7/12/85	Cablevision Management, Inc.	$ 15,000.00	For deposit o
0390	1/10/86	Larry E. Kuca d/b/a Campobello Realty Co.	$143,000.00	Larry E. Kuca
0415	2/21/86	Stephen A. Smith d/b/a The Communications Company	$ 65,000.00	Stephen A. Sm
0416	2/28/86	Castle Sewer and Water Corporation	$150,000.00	By Jim Guy Tu
0458	4/03/86	Susan M. McDougal d/b/a Master Marketing	$300,000.00	(not endorsed
0537	7/22/86	Larry E. Kuca d/b/a Campobello Realty	$ 6,000.00	Larry E. Kuca
0542	7/27/86	Richard M. Grasby, P.A.	$ 10,000.00	
0578	9/22/86	Cablevision Management, Inc.	$150,000.00	By Betty Tuck
0775	10/05/87	Southloop Construction Corp	$ 10,000.00	Pay to order Southloop C by Jim Guy
0776	10/08/87	Southloop Construction Corp	$ 70,000.00	Pay to order Southloop C by Jim Guy
0817	1/15/88	Southloop Construction Corp	$ 20,000.00	For deposit o

U.S. Department Justice

Office of the Independent Counsel

Little Rock, Arkansas

March 19, 1994

Randy Coleman, Esq.
Skokos & Coleman, P.A.
Suite 3200
425 West Capital
Little Rock, Arkansas 72201-3439

U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
FILED
IN OPEN COURT
JAMES W. McCORMACK, CLERK
BY: AAB
DEPUTY CLERK 3-22-94

Re: David L. Hale

Dear Mr. Coleman:

On the understandings specified below, the Office of the Independent Counsel ("this Office") will accept a guilty plea from David L. Hale to a criminal information charging him with violations of (1) Title 18, United States Code, Section 371, and (2) Title 18, United States Code, Sections 1341 and 2. These charges each carry a maximum sentence of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine of the greatest of $250,000, twice the gross gain, or twice the gross loss, and a mandatory $100 special assessment. The total maximum sentence of incarceration on both counts is 10 years' imprisonment.

If David L. Hale fully complies with the understandings specified in this Agreement, he will not be further prosecuted for any crimes related to his participation in the conduct of the affairs of Capital Management Services, Inc., Diversified Capital, Inc., and Madison Guaranty Savings and Loan, and any other crimes, to the extent David L. Hale has disclosed such criminal activity to this Office as of the date of this Agreement.

The understandings are that David L. Hale shall truthfully disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, shall cooperate fully with this Office, the Federal Bureau of Investigation and any other law enforcement agency so designated by this Office, shall attend all meetings at which his presence is requested with respect to the matters about which this Office inquires of him, and further, shall truthfully testify before the grand jury and/or at any trial or other court proceeding with respect to any matters about

With respect to this matter, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and David L. Hale. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Very truly yours,

ROBERT B. FISKE, JR.
Independent Counsel

RUSTY HARDIN
Associate Counsel

DENIS J. MCINERNEY
Associate Counsel

AGREED AND CONSENTED TO:

David L. Hale — DATE 3-19-94

APPROVED:

Randy Coleman, Esq.
Attorney for David L. Hale — DATE 3/19/94

The Law Firm of
Skokos & Coleman
A Professional Association

Theodore C. Skokos
Randy Coleman
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September 20, 1993

VIA FACSIMILE

Mr. Michael Johnson
U. S. Post Office & Courthouse
600 West Capitol Avenue
Little Rock, AR 72203
Fax No. 324-7199

Re: David Hale

Dear Michael:

Thank you for your letter of September 20, 1993. The procedures proposed therein are an eleventh hour attempt to do what could and should have been done several weeks ago given some proper inducement to Mr. Hale. I previously indicated to your office that we were willing to listen to reasonable proposals other than immunity for some time, but did not receive any concrete offers. Also, I have previously indicated to Fletcher some time ago very definitive areas in which Mr. Hale had knowledge and also reviewed a list of names involved as well. I made it known that Mr. Hale was willing to participate in undercover operations to develop additional information regarding same. This is much like the operations in Kentucky conducted by federal authorities which I read about in the morning newspaper. That opportunity will now be lost. We remain interested in plea negotiations. I will be in touch with you later.

Yours truly,

Randy Coleman

hall/johl/ac

703-448-6800

10. Describe your involvement in Madison Guaranty v. Frost.

To the best of my knowledge, I was not involved in this case.

11. Identify all persons with specific knowledge of your involvement in this matter.

Please see my Answer to Question 10, supra.

12. Identify all documents relating to your involvement in this matter.

Please see my Answer to Question 10, supra.

13. Describe your involvement with Rose's representation of Madison before the Arkansas Securities Department (ASD), including but not limited to details of work you performed in 1985 for Madison regarding obtaining approval from the ASD to issue preferred stock.

In the spring of 1985, Madison Guaranty Savings & Loan Association engaged the Rose Law Firm to represent it in an attempt to secure permission for the S&L to issue preferred stock and market it through a wholly-owned brokerage firm. While I was the billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose and whose specialty was securities law. I was not involved in the day-to-day work on the project. My knowledge of the events concerning this representation, as set forth in this Answer, has been largely derived from a review of the relevant documents rather than my contemporaneous involvement in the representation, since Mr. Massey primarily handled the matter.

Date: Friday, August 13, 1993 8:21 am
From: CRM02(CARVER)
Subject: Assoc AG's Meeting at the RTC

Larry --

From a sketcy report of the Associate AG's meeting with RTC Professional Liability Section staff a few days ago, it appears that he got to know some of those folks when he was retained as fee counsel. This led to the informal meeting.

In response to an inquiry from RTC staff, he announced that a Special Counsel has been selected, but the necessary FBI background investigation has not been completed. He told the RTC staff, who had urged that a Special Counsel be appointed, that the Special Counsel could be publicly named in September. (Is Gerry Stern the selectee? If not, who has been selected?)

The Assoc AG mentioned that the President wants all judge slots filled within a year. He also mentioned that if the RTC should receive demands for document production from a U.S. Attorney's office which the RTC believes is unreasonable, the RTC should feel free to let him know. (In response to this invitation, one of the RTC senior staffers told the Assoc AG that the RTC believes that it has an excellent relationship with the DOJ. The RTC staffer commented that only one U.S. Attorney (the U.S. Attorney in Denver) had been difficult to deal with, but he has left the USAO.

The Assoc AG emphasized that the DOJ is interested in working harmoniously and productively with the RTC.

security property. There are no adequate appraisals or other reviews of costs, potential sales, and feasibility. The review of the project by the examiners and the Appraisal Specialist disclosed significant problems with the project. Based on market data obtained by the Appraisal Specialist, a value estimate for the project is significantly below the book value of the investment and results in the loss noted above. There have been significant cash payments to the McDougal-Henley Group which have served to increase the costs, investment, and loss.

A. Description and Activity

Land at Castle Grande was involved in a series of flips and fictitious sales by members of the McDougal-Henley Group. These acquisitions and sales are described more fully in Exhibit III. These transactions and development expenditures have resulted in substantial cash payments to the McDougal-Henley Group.

The land which became Castle Grande was previously owned by Industrial Development Company of Little Rock (IDC). IDC developed this site located about 10 miles south of Little Rock, Arkansas, as an industrial park. About 1975, a water and sewage treatment system was installed, but most of the land was left undeveloped without roads or underground improvements. Since 1975, there have been very few industrial purchases. In September 1985, Madison Financial signed a work-out agreement with IDC and three banks. Under this agreement, Madison Financial acquired approximately 1,100 acres at Castle Grande by repaying the Bank's past-due loans of $1.75 million. Though it has not been proven, there is some indication that members of the McDougal-Henley Group were also involved in IDC.

Since October 1985, there have been nine purchases of large parcels. Most were by members of the McDougal-Henley Group, and they were fully financed by Madison Guaranty. Very little cost of sales was recognized and there is no support for the cost allocations or the sales prices. Except for two parcels involving Seth Ward (see below), cost allocations are based on a land cost of $1,000 per acre which was arbitrarily assigned by James McDougal. The cost allocations on the Ward parcels also appear arbitrary. In one case (Fitzhugh), a building valued by examiners at $450,000 and sold by Madison Financial for $500,000 received a cost of sale of $61,000. Most of the nine sales resulted in large, fictitious profits which have inflated net worth. Management is using arbitrarily low cost allocations to generate high profits on the initial sales leaving high costs and large losses for future sales as in Maple Creek.

About half of the 1,100 acres was held for approximately five months by Seth Ward, an employee of Madison Financial and one of the McDougal-Henley Group. Ward purchased the land in the initial acquisition in October 1985, with full Madison Guaranty financing. In February 1986, he sold most of the land to Madison Financial at a loss. Madison Guaranty paid this loss through another loan to Ward. Madison Financial immediately sold the two parcels involved to Castle

Sewer and Water Corporation (Castle Sewer) and to Fulbright. Ward still owns a small parcel which secures another Madison Guaranty loan and which will be purchased by Madison Financial.

Ward apparently warehoused this land to reduce Madison Financial's investment and the attendant borrowing from Madison Guaranty. In this way, limitations on Madison Guaranty's investment in its Service Corporation are avoided. In fact, $100,000 of Ward's remaining loan on Castle Grande land appears to have been diverted to Madison Financial through a third party. By using this circuitous route, additional Madison Guaranty investment in Madison Financial was disguised as a loan to Ward.

Most of the remaining land held by Madison Financial (about 470 acres) is to be developed as residential lots for double-wide, manufactured homes. A few of the lots are about .8 acres but most average .4 acres and in one phase, the average size is .27 acres. To date, $536,000 of development costs have been expended.

The following figures summarize the activity since acquisition. Of the total classified loans at Castle Grande of $2,983,000, $2,283,000 represent loans to members of the McDougal-Henley Group (all but one loan). Direct cash payments to group members or affiliated companies (from loan proceeds) include $225,000 paid to Madison Real Estate as sales commissions and $460,000 disbursed directly to individual group members. Of the residential development costs paid to date, $57,000 (10% of total) was paid to various group members or affiliated companies. Of this amount, $44,000 was paid to Madison Marketing and Designer Construction for advertising. This amount represents 89% of all advertising expenses to date, and a total of $900,000 has been reserved for future advertising. Sales of the large parcels in Castle Grande have resulted in the recognition of $1,451,000 of fictitious income to Madison Guaranty and Madison Financial, thus inflating net worth by this amount. This income was recognized despite the fact that almost all the sales were to affiliated persons and were fully financed by Madison Guaranty. This income generates bonuses to James McDougal and John Latham estimated to be approximately $100,000 each.

B. Classification

The Castle Grande assets subject to classification are as follows:

Eastern District of Arkansas

HAND DELIVERED

Post Office Box 1229
Little Rock, Arkansas 72203

September 16, 1993

Randy Coleman
Skokos and Coleman
3200 TCBY Tower
425 West Capitol Avenue
Little Rock, Arkansas 72201-3439

Re: David Hale

Dear Randy:

This letter is in response to your letter of September 15 which was hand delivered to my office.

My recollection of our meeting on September 7 is that I told you that I would not consider granting immunity to your client nor would I consider filing only misdemeanor charges. You made it clear to me that one felony would be as disastrous to your client as multiple felonies. Therefore, our plea negotiations are at an impasse.

I did tell you that if Mr. Hale was willing to offer substantial assistance in the prosecution of other defendants, I would consult with my Litigation Committee about requesting a motion authorizing a reduction in sentence. The motion to reduce sentence comes only after a plea of guilty to felony charges. If your client is interested in cooperating in exchange for such a reduction, he must make himself available to federal agents for questioning so that we can determine whether his proffer merits such a motion. I will be pleased to arrange such an interview at your earliest convenience.

The fact that I am not willing to enter into any other agreement with Mr. Hale should not be construed as reluctance on my part to prosecute any individual when the situation merits prosecution.

Sincerely,

Paula J. Casey
United States Attorney

PC/s

00-76-39

reluctance of anyone locally to engage in these matters, political realities being what they are.

Would it not be appropriate at this point for your office to consider terminating participation in this investigation and to bring in an independent prosecutorial staff, who are not so involved with the history of the personalities and circumstances of this case? Such action might serve your office better. It would certainly serve Mr. Hale better because I feel that he is being prejudiced by not being afforded opportunities that other targets of a potential criminal prosecution are afforded in the process of plea negotiations. For instance, I have offered an informal proffer of Mr. Hale's information for evaluation of its quality and content, but have received absolutely no interest in the process.

It is imperative that I hear from you on this at the earliest opportunity. Once the promised indictment occurs on September 21, the opportunities for negotiations substantially diminish in this case.

Yours truly,

Randy Coleman

hall/cast/sc

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

TUESDAY, DECEMBER 5, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order. Our first panel, William Kennedy. Is Mr. Kennedy here? He is in the back?

I understand, while we are waiting for Mr. Kennedy, that our Counsels have been in conference as it relates to the issuance of subpoenas. We will be requesting subpoenas for Margaret Williams, Robert Barnett and Ingram P. Barlow, and we request their appearance for tomorrow's session.

Mr. BEN-VENISTE. Mr. Chairman, I don't believe we were consulted about the idea of the issuance of subpoenas. I didn't know any particular reason why subpoenas would be necessary. I don't know what the schedules are for those individuals.

The CHAIRMAN. I would have hoped that the Majority and Minority Counsel would have consulted each other. I understand you were notified of that yesterday at 7:30 p.m., I think, in a memo to Richard Ben-Veniste from Michael Chertoff, regarding subpoenas for Williams, Barnett and Barlow, December 4, 1995: "After reviewing evidence obtained last week, the Chairman intends to ask the Committee to vote on subpoenas for Margaret Williams, Robert Barnett and Ingram P. Barlow at the opening of the Committee's hearings on Tuesday, December 5, 1995. Attached are copies of the subpoenas which are returnable for 9:30 on Wednesday, December 6th." So I will wait, obviously until Senator Sarbanes gets here, but I hope that we would issue the subpoenas.

I would also recommend that Counsels might advise the witnesses of our intent to do this for their own scheduling purposes. Although the three people are here in DC, if they have not been notified, it would be my suggestion that Majority and Minority Counsels and their staffs call these people and indicate to them

that it is our intent that they come forward so that we can address certain questions that have been raised.

So I will withhold, again, in terms of voting out the subpoenas, certainly until Senator Sarbanes gets here. In the meantime, Counsel and their staffs can hopefully begin to work toward accommodating this situation.

Mr. Kennedy——

Mr. BEN-VENISTE. Mr. Chairman, to put a final point on that.

The CHAIRMAN. Sure.

Mr. BEN-VENISTE. The memo that you have referred to was faxed according to the signature, the fax signature, at 9:31 last night to us. We really didn't have a chance to consult about it, but my only point is that these individuals hardly need subpoenas to appear.

The CHAIRMAN. If we can——

Mr. BEN-VENISTE. They can do so voluntarily.

The CHAIRMAN. I will ask the staff to contact the people and if they will appear voluntarily, that's fine. If there's a question, then we'll issue subpoenas. If we can arrange for that, that's fine. If not, the subpoenas will issue.

Mr. Kennedy, for the purposes of administering the oath, would you stand, please.

Mr. Kennedy, do you have a statement?

SWORN TESTIMONY OF WILLIAM KENNEDY
ATTORNEY, ROSE LAW FIRM
FORMER ASSOCIATE COUNSEL TO THE PRESIDENT

Mr. KENNEDY. I do not, Mr. Chairman.

The CHAIRMAN. Then I will turn to Senator Grams.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. Good morning, Mr. Kennedy.

Mr. KENNEDY. Good morning, Senator.

Senator GRAMS. Thank you for being here.

Mr. Kennedy, I understand that you currently work at the Rose Law Firm in Little Rock, Arkansas; is that correct?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. Until last November, however, you served as an Associate Counsel in the White House; is that correct?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. Where did you work prior to your tenure at the White House?

Mr. KENNEDY. At the Rose Law Firm.

Senator GRAMS. Where you worked with Hillary Clinton, Webster Hubbell, Vince Foster, among others?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. Now, I would assume that you would consider yourself to be a close friend of the Clintons as well?

Mr. KENNEDY. Yes, sir. That would be accurate.

Senator GRAMS. You were a highly trusted aide in the White House during your tenure as a member of the White House Counsel's staff?

Mr. KENNEDY. I hope so, Senator.

Senator GRAMS. I wanted to talk to you this morning about a phone call relating to Mr. Coleman, Randy Coleman, who was rep-

resenting Mr. David Hale. On August 17, 1973, did you receive a phone call from a gentleman named Randy Coleman?

Mr. KENNEDY. Yes, I did.

Senator GRAMS. Could you explain to us who Mr. Coleman is?

Mr. KENNEDY. At that time, Mr. Coleman was an attorney in private practice in Little Rock.

Senator GRAMS. Mr. Coleman was calling you on behalf of or representing——

Mr. KENNEDY. In the course of that conversation, he told me he was representing a guy by the name of David Hale.

Senator GRAMS. That is the same David Hale who ran Capital Management Services?

Mr. KENNEDY. Yes, sir.

Senator SIMON. Could you pull that microphone a little closer to you?

Mr. KENNEDY. Is that better? Sorry, Senator.

Senator GRAMS. I understand you received a message slip from Mr. Coleman that his call was fairly urgent and that he wanted you to return his call as quickly as possible?

Mr. KENNEDY. Yes, sir. I think that's right.

Senator GRAMS. Mr. Kennedy, could you please describe the substance of the conversation that you had with Mr. Coleman on August 17, 1993?

Mr. KENNEDY. It was quite short. He indicated that he was calling in reference to a client that he had. I'm not sure if he identified Mr. Hale in the first conversation because I had two conversations with him, but he said he had a client, and I had a client and that there was a mutuality of interest. He indicated that his client was the subject of possible indictment by the Federal Government and that he wanted to talk to me about the mutual interests of our clients.

Senator GRAMS. I have some of your notes from that phone conversation and on the first line, letter A, you have underlined twice the name David Hale, so I think he must have identified—you can see in your notes here.

Mr. KENNEDY. He must have.

Senator GRAMS. "SBIC David Hale—SBIC." Now, he mentioned, as you just said, that there was common interest between his client, who is Judge Hale, and your client; is that correct?

Mr. KENNEDY. Senator, I was engaged. Say it again, please.

Senator GRAMS. You mentioned that in the conversation with Mr. Coleman, he told you that there were common interests between his client, who was David Hale, and your client; is that correct?

Mr. KENNEDY. That's what he said.

Senator GRAMS. Who was your client? How did you interpret that?

Mr. KENNEDY. I was working in the White House Counsel's Office. I interpreted it to be the President of the United States.

Senator GRAMS. So there's mutual interests, common interests between his client, Judge Hale, and your client, President Clinton?

Mr. KENNEDY. That's what he said.

Senator GRAMS. What sort of common interest between Judge Hale and President Clinton was he referring to in that phone conversation?

Mr. KENNEDY. He said that David Hale—you can see it in my notes—that David Hale was the Heidi Fleiss of loans, that he was a back-door lender to the politicians, and he indicated that there was involvement between the President and Governor Tucker—the President in his capacity as Governor and Jim Guy Tucker with respect to some of the loans that David Hale had made.

Senator GRAMS. Did he mention the Heidi Fleiss phrase?

Mr. KENNEDY. Yes, he did.

Senator GRAMS. What did you interpret that to mean? What kind of loans would these have been then?

Mr. KENNEDY. I wasn't sure what to make of that comment. It was curious enough for me to write it down, but Heidi Fleiss was much in the news at that point in time, and I assume that he meant that he was a promiscuous lender.

Senator GRAMS. Did he tell you that you and he had clients who are developing a problem in the Federal investigation in Little Rock? Did he mention that?

Mr. KENNEDY. He didn't use those words, Senator. He said that there was a mutuality of interest.

Senator GRAMS. Just referring back, Mr. Coleman testified before this Committee last Friday and he said that he told you that he had clients and you had a client who are developing a problem in the Federal investigation in Little Rock.

If you don't remember the specific words, was that the tone of the comments?

Mr. KENNEDY. Senator, he did not use those words, at least to the best of my recollection, and what he said was that there was a mutuality or commonality of interest between his client and my client.

Senator GRAMS. Mr. Kennedy, along with the name David Hale, on the top of your notes was also the SBIC. I assume that this referred to Capital Management Services, which was a Small Business Investment Company, or SBIC?

Mr. KENNEDY. Senator, I don't know if he mentioned Capital Management in the first conversation or not. He clearly indicated that Judge Hale was running an SBIC in the first conversation.

Senator GRAMS. Your notes referred twice to Governor Tucker, meaning Arkansas Governor Jim Guy Tucker, who has been indicted by Special Prosecutor Kenneth Starr. In fact, in the middle of the page your notes read "President—Governor Tucker." Again, I'm assuming that "President" refers to President Clinton.

What does this mean by putting the two together, "President—Governor Tucker"?

Mr. KENNEDY. Again, Senator, he was saying that there was some commonality or mutuality of interest between his client and my client, the President, and he mentioned that Governor Tucker and then-Governor Clinton had some involvement or there would be allegations that they had some involvement in some of Hale's activities. He didn't go into any details in this first conversation.

Senator GRAMS. Would that go back to put substance to the other question or comment, did he tell you that he had clients and you had a client who were developing a problem? Again, going back, those two references make sense if you put them together.

Mr. KENNEDY. Senator, I don't recall him using the words "developing a problem." Again, what he said was there was a mutuality or commonality of interest.

Senator GRAMS. He didn't go on to elaborate what that interest might be?

Mr. KENNEDY. Not in this conversation, no.

Senator GRAMS. Despite the fact that you wrote down "Heidi Fleiss, loans," you even felt that he was talking about him being a promiscuous lender?

Mr. KENNEDY. Senator, he said it. I didn't.

Senator GRAMS. At the bottom of the page, I believe your notes read "asking for anything." That has an asterisk beside it. In other words, you wanted to highlight this. Do you know what you were referring to when you wrote this down?

Mr. KENNEDY. Senator, I don't know for sure. I'm not sure whether Mr. Coleman said he wasn't asking for anything or that he was asking for anything. I don't know. Personally, I think he wanted something by calling me, but you would have to ask him exactly what he wanted.

Senator GRAMS. You're just making a mental note, rather than maybe referring to something that he had said "asking for anything" or any hint or inference that he was making?

Mr. KENNEDY. Senator, I didn't make a mental note. I made a physical note because it's there in front of you. The short answer is I can't recall right now whether Randy said I'm not asking for anything or whether he was indeed asking for something.

Senator GRAMS. You didn't write "not asking for anything."

Mr. KENNEDY. I didn't write "not asking."

Senator GRAMS. I didn't know if this was something you were wondering or that he had mentioned that you recall.

Mr. KENNEDY. I can't give you more content than that, Senator.

Senator GRAMS. What action did you take after you had this conversation with Mr. Coleman?

Mr. KENNEDY. I contacted my superior, Bernard Nussbaum, then Counsel to the President and asked him if I could come and talk to him.

Senator GRAMS. Could you describe that conversation with Mr. Nussbaum?

Mr. KENNEDY. It was quite brief. I basically reported—let me go back for a moment, Senator. The way I left it with Mr. Coleman is that I told him I wasn't sure I could talk to him, but I would inquire and get back to him. I then proceeded to do just that.

I called the West Wing—my office was in the Old Executive Office Building—and asked if Bernie was there and walked over to see him.

Senator GRAMS. In that conversation which you just mentioned here, you said you didn't know if you should be talking to Mr. Coleman about this. Were you uncomfortable? Did you mention that to Mr. Nussbaum, that you were uncomfortable talking——

Mr. KENNEDY. Yes.

Senator GRAMS. Why would you be uncomfortable?

Mr. KENNEDY. Without knowing precisely what Mr. Coleman wanted, it was clear to me that he had a client with a developing

criminal problem, that he was probably looking for some sort of White House involvement in that and that would be improper.

Senator GRAMS. Did you feel he was just asking for a favor, maybe, when you wrote that in your notes, "asking for anything," rather than being more concerned that he was trying to link something between his client and a problem that could possibly face your client?

Mr. KENNEDY. Senator, in this first conversation we did not get very far in terms of details and specifics, but clearly I felt and still feel that Mr. Coleman was looking for something. To the extent that he had a client that had criminal difficulties, if he was wanting involvement from the White House, that would be improper.

Senator GRAMS. Did Mr. Nussbaum encourage you to call Mr. Coleman back and pump him for any more information on what this call was all about?

Mr. KENNEDY. When I walked over and talked to Mr. Nussbaum, I related this brief conversation that I had with Randy Coleman. I told him that I did not feel it was proper for us to continue to discuss things with him, but I didn't want to make that decision on my own. I gave Mr. Nussbaum a brief recap of the conversation. He agreed that it was improper, and he wanted me to call Mr. Coleman back. We agreed in doing so, I should try to find out a little more about what was going on, and that's what I did.

Senator GRAMS. But what was the purpose, then, to call him back? Were you going to ask him more questions?

Mr. KENNEDY. The ultimate purpose was to tell him if he was indeed looking for assistance from the White House with regard to his client's legal problems, he would be out of luck.

Senator GRAMS. You wouldn't be able to help him?

Mr. KENNEDY. That's correct.

Senator GRAMS. You did call Mr. Coleman back?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. That was on August 19th; is that correct?

Mr. KENNEDY. I believe so, Senator.

Senator GRAMS. Was anyone else on the line at the time that you were talking to Mr. Coleman?

Mr. KENNEDY. Yes.

Senator GRAMS. That was——

Mr. KENNEDY. It was Ms. Beth Nolan. She was a peer of mine. She was Associate Counsel in the Office of the Counsel to the President and I asked her to sit in on the phone conversation with me and Mr. Coleman.

Senator GRAMS. Why did you want someone else on the line with you?

Mr. KENNEDY. As I said, I was uncomfortable with the thrust of the initial conversation, and I wanted a witness or someone who could speak about my subsequent conversation with Mr. Coleman other than myself.

Senator GRAMS. You called Mr. Coleman back on August 19th, and I believe we have your notes also from that conversation, and if we could put that up on the Elmo as well. It's dated at the top 8/19. It again mentions Mr. Hale and SBIC—"Capital Management Services. Investigation—2 weeks ago. FBI seized records 2W ago"—

2 weeks ago. Do you have those notes in front of you? Could you read the next couple of lines?

Mr. KENNEDY. Where do you want me to start, Senator?

Senator GRAMS. Probably right after David Hale, SBIC "notice of investigation," I think is the best I can make out from that line, "the nature of"——

Mr. KENNEDY. No, it's not "notice." I believe it's "nature of investigation, propriety of loans made past few years. Informed that our loan transactions relate to Madison Guaranty."

Senator GRAMS. This refers to what?

Mr. KENNEDY. Mr. Coleman, I believe, told me that he, Mr. Coleman, had been informed that there were loan transactions either engaged in by Mr. Hale or the SBIC that related to Madison Guaranty.

Senator GRAMS. Then it goes on to read "all records liquidation of SBIC both names cropped up Whitewater Development Corporation not stopping with David Hale." By "both names," are your notes again referring to President Clinton and Governor Tucker?

Mr. KENNEDY. They could be referring to President—again, we're talking about Governor Clinton at this point in time or the point in time that he's talking about. We could be talking about that. We could also be talking about the two names that are down below, South Loop and Castle Grande, and Whitewater. I believe the reference is to the two individuals.

Senator GRAMS. This then goes beyond Mr. Coleman calling to ask for anything. He is really calling to talk about potential problems cropping up not only for his client but your client.

Mr. KENNEDY. Clearly.

Senator GRAMS. A little further down it says "indictment for future indictment." It then reads "took out loans from SBIC. SBIC salvage situations existed within Madison."

What sort of salvage connection between Capital Management Services and Madison Guaranty do you think Mr. Coleman was referring to at that point?

Mr. KENNEDY. Senator, I think the next line of the notes is instructive on that point. It says "may have parked bad loans with David Hale." Then it says "knowledge." What I believe is that Mr. Coleman was telling me that bad loans may have moved from Madison into the SBIC that David Hale was running.

Senator GRAMS. Who may have parked these bad loans with David Hale?

Mr. KENNEDY. I don't believe he said.

Senator GRAMS. He just referred that bad loans may have been parked?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. So, in other words, they were moved from Madison Guaranty——

Mr. KENNEDY. Yes, sir.

Senator GRAMS. —to the SBIC?

Let's move on to the third page. This is document number 7377?

Mr. KENNEDY. Yes, sir.

Senator GRAMS. Again, I know some of these copies are not very good, Mr. Kennedy, but could you read what it says at the top of that page for me, please?

Mr. KENNEDY. OK. I'm starting at the top of 7377. It says "easy source and dollar signs for politicians" and it says "easy dollars for people."

Senator GRAMS. That means?

Mr. KENNEDY. Again, referring to David Hale, possibly going back to the Heidi Fleiss reference, Senator. Then it says "David Hale violation of 18 U.S.C. 371. Regulatory fraud. Regulatory functions. 10 year statute/5 years on others." It says "SOL," which I believe refers to statute of limitations. Then it says "records," it says "meetings taking place between principals involved. 1983/84 timeframe." Then it says "sole source relationship with Madison."

Senator GRAMS. "Sole source." Now, when it said "records meetings taking place between principals involved," again, does that mean or refer to meetings between Judge Hale, President Clinton and Governor Tucker?

Mr. KENNEDY. I believe he said in this conversation that David Hale would make allegations that such meetings had occurred. I don't know if he was limiting this statement to the two individuals, then-Governor Clinton and Jim Guy Tucker, or whether he was talking about others as well.

Senator GRAMS. In his deposition, Mr. Coleman said that you asked if there were any face-to-face meetings that had occurred with your client, President Clinton, and that he said at that time yes; is that correct, that there had been meetings?

Mr. KENNEDY. I don't recall that conversation. I may very well have asked that question, yes, sir.

Senator GRAMS. Mr. Coleman again testified to that last Friday here to the Committee. Mr. Coleman also told this Committee on Friday that he understood you to mean face-to-face meetings between Judge Hale and President Clinton?

Mr. KENNEDY. As I say, I don't recall asking that question, but clearly we were talking about meetings that have occurred, so I may have.

Senator GRAMS. I believe on page 14 of your deposition, which was dated November 1, 1995, you stated that you and Mr. Nussbaum agreed that on this second call you and Mr. Coleman would not talk about anything substantive. Now, this is an awful lot of notes and a lot of questions. Would you consider this a substantive call, rather than a call just to say I'm sorry, we can't help you?

Mr. KENNEDY. First of all, Senator, I'm looking at page 14 of my deposition and I don't see that statement, but——

Senator GRAMS. It would be line number 2. It's on the right-hand column where it says page 14.

Mr. KENNEDY. It's a carry-over. It says "well, I told Bernie that I did not feel comfortable with him and we agree." We further agreed we should try to find out what was going on when I called him back to tell him we were not going to engage in any substantive discussions, so that's what I did.

Senator GRAMS. You were not going to engage in any——

Mr. KENNEDY. Substantive discussions with him.

Senator GRAMS. Would you consider this phone conversation, though, substantive?

Mr. KENNEDY. No, sir.

Senator GRAMS. Considering the notes and the length of it and also having——

Mr. KENNEDY. Senator, this conversation was probably less than 3 minutes long.

Senator GRAMS. It's a lot of notes for 3 minutes.

Mr. KENNEDY. I disagree with that, Senator, but it was probably no longer than 3, 4 or 5 minutes long.

Senator GRAMS. But, again, the purpose of the call was to tell Mr. Coleman——

Mr. KENNEDY. There were two purposes of the call, Senator. The primary purpose after my conversation with Bernie, where he and I were in agreement that we would not engage in any substantive discussions with him about whatever it was that he wanted, was to try to find out a little bit more about what he was talking about.

Senator GRAMS. Did you tell him that first or did you proceed to try to ask for more information before telling him that?

Mr. KENNEDY. What I did was, when I called him back the second time, I said something along the lines of I don't think I can talk to you, Randy, but I need to know a little bit more before we can make that decision.

Senator GRAMS. Going back to "asking for anything," did you ask him whether Judge Hale was trying to negotiate anything? Did you come out and say is Judge Hale asking for anything or are you asking for anything?

Mr. KENNEDY. I don't recall asking that directly. I may have. I mean, clearly, Senator, Randy Coleman was looking for something when he called me.

Senator GRAMS. If the purpose of the call was to tell Mr. Coleman that you couldn't help him, why wasn't that or any part of that conversation listed anywhere in your notes? I see a lot of very interesting things in your notes, but nothing about not being able to help Mr. Coleman.

Mr. KENNEDY. Senator, I did not take notes of what I said. If you look at these notes, these are things that he said.

Senator GRAMS. But there was no reference to an answer or response from him to that statement either. He must have had some kind of a comment, saying jeez, I wish you could help me or——

Mr. KENNEDY. Senator, I don't remember him saying that. I remember him basically saying well, OK.

Senator GRAMS. Now, according to the notes taken by Ms. Nolan, you thanked Mr. Coleman for giving you the heads-up. Is that what you said?

Mr. KENNEDY. I may have said that, yes, sir.

Senator GRAMS. At the end of the second conversation, did you tell Mr. Coleman that you had to meet with your clients and get back to him? Is this, maybe, the heads-up reference, that thanks for telling me this? Why would you have to meet with your clients and why would you have to get back to him if Mr. Nussbaum and you had already discussed that you couldn't help him anymore and that this was not to go any further than this second call?

Mr. KENNEDY. Senator, I don't recall saying I would get back to him in the second phone call. I don't believe I did. I also don't believe I used the word "clients" in the second conversation.

Senator GRAMS. I just wanted to make sure, but Mr. Coleman—again, I'll go back to this—on Friday did testify that you did say "client," but he remembered you saying "clients" as plural, and the reason he remembered was because he was probably a little surprised at that. He said on Friday at the end of the conversation when Kennedy said "clients" that struck him as unusual. So he remembered very vividly that you had said "clients."

Mr. KENNEDY. Again, Senator, that's what makes horse races. I don't recall saying that. I don't recall saying I'll get back to you after the second conversation.

Senator GRAMS. What action did you take following the second call to Mr. Coleman?

Mr. KENNEDY. Again, I reported to Mr. Nussbaum.

Senator GRAMS. What did Mr. Nussbaum do after you reported to him and talked with him about it?

Mr. KENNEDY. As far as I know, nothing. I told him in that conversation I did not consider these allegations remotely credible.

Senator GRAMS. Did you tell the President about the conversation at all?

Mr. KENNEDY. I did not.

Senator GRAMS. Did you talk to the First Lady about the conversation?

Mr. KENNEDY. I did not.

Senator GRAMS. Why not?

Mr. KENNEDY. Didn't see any need to.

Senator GRAMS. You didn't see any need when you get a call from someone feeling that there was a connection or a growing connection between his client and bad loans, easy loans to politicians, and mentioning numerous times your clients, referring to President Clinton and also Governor Tucker, you felt that even if these were not credible leads or information, that somehow you shouldn't pass these on to the President?

Mr. KENNEDY. Senator, I didn't feel it was my place. I didn't feel these were credible allegations. I reported them to Mr. Nussbaum. I didn't see the need to go any further.

Senator GRAMS. I think we go back to, again, referring to some of the opening questions, that you were very close friends with the Clintons, had worked with the Clintons for numbers of years?

Mr. KENNEDY. Yes, sir, and was fortunate to do so.

Senator GRAMS. You didn't feel even as a friend, besides professional responsibility, that you in passing or in any conversation later on ever mentioned to Mr. Clinton or Mrs. Clinton about these conversations or worried about the possible connection that this could lead to and apparently thanked Mr. Coleman for a heads-up?

Mr. KENNEDY. Senator, I repeat, I did not discuss this conversation with the President nor with the First Lady.

Senator GRAMS. Do you know if Mr. Nussbaum took this any further?

Mr. KENNEDY. I do not know. As far as I know, he did not, but I don't know that for a fact.

Senator GRAMS. But, bottom line, you felt there was nothing here that bothered you and that you should take this and pass it on to your client or the person that you were working for at the time, and that was President Clinton?

Mr. KENNEDY. I reported it to my superior, Mr. Nussbaum, Senator, and that is as far as I went with it.

Senator GRAMS. Thank you, Mr. Kennedy. I don't have any further questions.

Mr. KENNEDY. Thank you, Senator.

Senator GRAMS. I yield the balance of my time to Mr. Chertoff.

Mr. CHERTOFF. Mr. Kennedy, just to put this in context, you knew Mr. Hale from Arkansas; right?

Mr. KENNEDY. I knew of him, Mr. Chertoff.

Mr. CHERTOFF. Never spoken to him?

Mr. KENNEDY. I may have met him at a function somewhere but did not know him well, no, sir.

Mr. CHERTOFF. You took the call from him; correct?

Mr. KENNEDY. From Mr. Hale?

Mr. CHERTOFF. No, I'm sorry, Mr. Coleman. You took the call from Mr. Coleman?

Mr. KENNEDY. Was the import of your question did I know Mr. Coleman or Mr. Hale?

Mr. CHERTOFF. Do you know Mr. Coleman?

Mr. KENNEDY. Yes, I do.

Mr. CHERTOFF. You took the call from Mr. Coleman?

Mr. KENNEDY. Yes.

Mr. CHERTOFF. When Mr. Coleman mentioned Madison Guaranty and Whitewater in the first call, you knew what those references were?

Mr. KENNEDY. I don't believe he mentioned Whitewater in the first call, Mr. Chertoff.

Mr. CHERTOFF. So your recollection is he mentioned Madison in the first call?

Mr. KENNEDY. I believe that's correct.

Mr. CHERTOFF. You knew what Madison was?

Mr. KENNEDY. Yes.

Mr. CHERTOFF. You had worked on Madison matters at the Rose Law Firm?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. No?

Mr. KENNEDY. No.

Mr. CHERTOFF. Did you have anything to do with the stock offering that was discussed and handled in 1985 and 1986?

Mr. KENNEDY. I knew the work was going on, Mr. Chertoff, but I didn't have anything substantively to do with it.

Mr. CHERTOFF. Did you attend conferences on it?

Mr. KENNEDY. Not that I recall doing so, no, sir.

Mr. CHERTOFF. I would like to ask that we put on the Elmo a bill. It's an invoice, January 30, 1986, for the legal services rendered through January 30, 1986 by H.R. Clinton—I think you have a copy before you—W. Kennedy, R. Massey, and R. Donovan.

By the way, Mr. Chairman, Mr. Hubbell had suggested last week that we might be assisted in analyzing the work that various lawyers did if we were to consult the underlying bills. It turns out that the total universe of bills that the Senate has received from all sources, including the Rose Law Firm, are about five invoices, covering only a very few months of the 18-month period that the Rose

Law Firm represented Madison, so Mr. Hubbell's invitation to us is one we, unfortunately, are not in a position to accept.

Do you see this bill?

Mr. KENNEDY. Which one, Mr. Chertoff?

Mr. CHERTOFF. It's the one dated January 30. It says "1—stock offering." It has total attorneys' fees of $2,300. I'll read you what it says. It says:

Revise agreements. Begin drafting of minutes and offering circular. Revise offering circular. Conference with J. Latham and D. Fitzhugh. Research Arkansas securities and FHLS Department of Regulations. Revise minutes. Review and revise offering materials. Conferences with S. Hawkins, B. Kennedy, P. Jones, S. Ward, H. Clinton, J. Latham and D. Fitzhugh. Draft and revise letter to C. Handlon.

Does that refresh your memory that you had worked on matters relating to Madison?

Mr. KENNEDY. It does, Mr. Chertoff.

Mr. CHERTOFF. It does?

Mr. KENNEDY. Yes. I mean, I must have.

Mr. CHERTOFF. Let me put up also on the Elmo a memo to you from Rick Massey dated September 6, 1985 regarding "Madison Guaranty offering of units of limited partnership interests." That's also in your package?

Mr. KENNEDY. One second, Mr. Chertoff.

Mr. CHERTOFF. Sure. We'll get that for you. It's in the package in front of you?

Mr. KENNEDY. Yes, I'm familiar with it.

Mr. CHERTOFF. In addition to the issue of getting permission to offer stock to raise money for Madison, did you also give advice or get involved in discussions concerning another plan Madison had to raise money, which was to issue limited partnerships in certain commercial property they were going to develop?

Mr. KENNEDY. Mr. Chertoff, I remember this memo, and I have seen it before, and I remember this conversation with Mr. Massey. I do not believe that I performed any services on this matter, that Rick had asked me to be available if need be because I had pretty good experience in private placements at this point in time, but I do not believe that I performed any work whatsoever on this matter, and I don't recall doing this work, but I must have.

Mr. CHERTOFF. At any rate, as of the time that Mr. Hale called you and mentioned Madison, you certainly knew and understood that the Rose Law Firm, including the First Lady, had, in fact, performed legal services for Madison?

Mr. KENNEDY. Yes, that's correct.

Mr. CHERTOFF. You knew that the President and the First Lady were well acquainted with Mr. McDougal; is that also correct?

Mr. KENNEDY. Yes.

Mr. CHERTOFF. So this call from Mr. Coleman talking about Mr. Hale and loans to Mr. McDougal and transactions with Madison you had to understand had some relationship to events that you had personal familiarity with; is that correct?

Mr. KENNEDY. Mr. Chertoff, let me answer it this way. I knew about Madison. I knew about Whitewater. I had never, ever in any capacity anywhere from any source ever heard of any interaction with David Hale, nor do I believe I knew at the time of the Randy Coleman phone call that he owned or operated, or whatever his po-

sition was, a SBIC, nor had I ever heard from any source anywhere of any involvement with David Hale or his SBIC with either Madison or Whitewater.

Mr. CHERTOFF. The point is, Mr. Kennedy, at the time you got the first phone call, the names of the individuals that Mr. Coleman was saying Mr. Hale had transacted business with were names and individuals with whom you were familiar from your own legal work, from your own knowledge of what the Rose Firm was handling and from what your knowledge of the Clintons' circle of friends was; am I not correct?

Mr. KENNEDY. If you state it that way, yes, except for David Hale and his SBIC.

Mr. CHERTOFF. Now, I just want to finish one question. I see my time is up.

Notwithstanding the suggestion that there was something that made you uncomfortable about the call, you then called back Mr. Coleman and engaged in a discussion in which you asked him a series of questions including, among other things, what was the anticipation of what David Hale would be charged with, where was this going to go, a conversation in which among other names mentioned were Whitewater Development and Jim Guy Tucker, names with which you were also familiar; am I not correct?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. Your testimony is that after these two phone calls, other than telling Mr. Nussbaum and reporting to him what you had learned, you said and did nothing further with this information?

Mr. KENNEDY. I think I testified in my deposition, as you know, Mr. Chertoff, that approximately a week or so later I asked Webb Hubbell if he had ever heard of any interaction with David Hale and his SBIC in connection with Whitewater, and his answer was no, he had not.

Mr. CHERTOFF. Why did you ask Webb Hubbell?

Mr. KENNEDY. Simply because he had some familiarity with the Whitewater matters.

Mr. CHERTOFF. How did you know he had a familiarity with Whitewater?

Mr. KENNEDY. From his interaction with the campaign in 1992.

Mr. CHERTOFF. Mr. Chairman, I know I am out of time. I will pick this up.

The CHAIRMAN. I'm going to pick it up.

You said that you didn't discuss anything about Whitewater with him?

Mr. KENNEDY. Mr. Chairman, I didn't say that.

The CHAIRMAN. When you were talking to Mr. Hale's counsel—what's his name?

Mr. KENNEDY. Randy Coleman.

The CHAIRMAN. When you were talking to Randy Coleman, did you have any discussion about Whitewater?

Mr. KENNEDY. In the second conversation, he mentioned Whitewater, Mr. Chairman, as the notes indicate.

The CHAIRMAN. That's the first time you heard about that?

Mr. KENNEDY. In the first conversation, I do not recall Mr. Coleman mentioning Whitewater.

The CHAIRMAN. OK. Senator Sarbanes.

Senator SARBANES. Mr. Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes. I'll just take 2 minutes, and I appreciate your yielding to me, Senator Sarbanes.

We're asking witnesses to recall minutia about phone conversations 2½ years ago. I hope no one asks me about a phone conversation I had 2½ years ago because I am sure I'm not going to remember all the details, but, Mr. Kennedy, in your first conversation with Mr. Coleman, you mentioned you felt uncomfortable?

Mr. KENNEDY. Yes, sir.

Senator SIMON. That shows an ethical sensitivity on your part. Did Mr. Nussbaum ever ask you to do anything that was unethical?

Mr. KENNEDY. No, sir.

Senator SIMON. Did President Clinton ever ask you to do anything that was unethical?

Mr. KENNEDY. No, Senator.

Senator SIMON. Did Mrs. Clinton ever ask you to do anything that was unethical?

Mr. KENNEDY. No, Senator.

Senator SIMON. I thank you.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Good morning, Mr. Kennedy.

Mr. KENNEDY. Good morning, Mr. Ben-Veniste.

Mr. BEN-VENISTE. In testimony given in open session before this Committee, Mr. Coleman stated that he had two purposes in mind when he called you. First, he said he always calls people who may have some involvement in cases that he's involved with when he first gets involved, and second, he said he called in the hope that his call would provoke some action by the White House that was foolish. I trust he didn't make known his purpose to you in that respect during his telephone conversations with you?

Mr. KENNEDY. I appreciate Mr. Coleman's confidence in me, Mr. Ben-Veniste, but no, sir, he didn't tell me he was wanting to make me look foolish or the White House look foolish.

Mr. BEN-VENISTE. Indeed, in connection with the way you responded to Mr. Coleman's telephone calls to you, essentially you didn't do anything with the material that he gave you?

Mr. KENNEDY. Other than report to Mr. Nussbaum, no, sir, I did not.

Mr. BEN-VENISTE. A question was raised, I believe, by Senator Grams as to what Mr. Coleman was told by you at the conclusion of your second conversation, and I have here, Senator, Mr. Coleman's testimony before our Committee in deposition. We haven't gotten the transcript of the hearing yet, but at page 149, sir, the question was asked of Mr. Coleman: "When you talked to him the second time, did he"—referring to you, Mr. Kennedy—"indicate that they would have no involvement with you or words to that effect?"

Dropping down to line 16:

Answer: I recall him telling me that I may call you back and I may not, and he never did. That's my memory of it.

Question: Do you recall him saying to you he wasn't going to interact with you anymore?

Answer: No. What I remember him saying, his last words were 'I may call you back and I may not.'

Indeed, you never did call him back?

Mr. KENNEDY. No, sir, I had no more interaction with Mr. Coleman.

Mr. BEN-VENISTE. You never called the Justice Department to suggest that they do anything vis-à-vis this phone call or about David Hale?

Mr. KENNEDY. That's correct, sir.

Mr. BEN-VENISTE. Actually, I have no further questions along this line.

Mr. Kravitz.

Mr. KRAVITZ. Thank you, Mr. Ben-Veniste. Actually, I have just one quick point.

Mr. Kennedy, I think as the January 30, 1986 bill relating to the stock offering was described previously, that indicates that you may have participated in one or more conferences with other lawyers relating to that stock offering, and I know you've testified yourself just a few moments ago that, although you may have participated in those conferences, you don't remember doing any work on that matter. I want to show you another document that I think may help shed some light on that testimony of yours.

Do you have in front of you a two-page document entitled "Recap of fees for Madison Guaranty Savings & Loan"?

Mr. KENNEDY. Yes, I do, Mr. Kravitz.

Mr. KRAVITZ. If we could put that up on the screen. First of all, do you know what this document is? Just for the record, its Bates numbers PM&S 02133 and 02134.

Mr. KENNEDY. Mr. Kravitz, I saw some of Mr. Hubbell's testimony on Friday when this document was waved around and I know it's a recap of fees. I don't know anything other than that. This is the first time I've had a physical copy of it in my hands.

Mr. KRAVITZ. Does it appear to be a recap or summary of the various fees billed on the Madison matter for different subjects within the Madison matter by specific individual lawyers at the Rose Firm over a period of time from 1983 through 1987?

Mr. KENNEDY. Yes, sir. That's what it appears to be.

Mr. KRAVITZ. Does your name appear anywhere on this document?

Mr. KENNEDY. One second, Mr. Kravitz.

No, sir, my name doesn't appear on that document.

Mr. KRAVITZ. Is that consistent with your memory that, although you may have participated in one or more conferences, you actually did no work on the stock offering matter?

Mr. KENNEDY. Mr. Kravitz, the possibility is this. I was a partner at this point in time, and someone may have come and bounced something off of me, asked me a question, wanted to know what I thought about something. I put no time down, didn't consider it a billable matter. They may have gone back and said conference with Bill Kennedy, and then it flowed through to the bills. As I testified earlier, and this is still my testimony, I performed no sub-

stantive legal work, sent no bills, had no substantive interaction with Madison Guaranty work.

Mr. KRAVITZ. Thank you. I think this document is certainly consistent with that testimony.

Mr. KENNEDY. Yes, sir.

Mr. KRAVITZ. We yield back the time.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Kennedy, mine are somewhat general questions. When you received the call from Randy Coleman, you sought Bernie Nussbaum's advice as to whether you should talk to him or not?

Mr. KENNEDY. Yes, sir.

Senator FAIRCLOTH. Now, being an experienced attorney, did you think it was appropriate advice from Mr. Nussbaum for you as a Government attorney to be discussing personal legal issues related to the President and criminal plea bargains in Arkansas?

Mr. KENNEDY. Senator, I can only answer the question this way. I didn't initiate the phone call. Mr. Coleman called me. I was uncomfortable about the conversation, but we didn't get far enough in the first conversation to really understand what Mr. Coleman was driving at so——

Senator FAIRCLOTH. What was your initial instinct?

Mr. KENNEDY. My initial instinct was that he wanted something.

Senator FAIRCLOTH. You said that the call was not credible, but within a week of the call you spoke with Webb Hubbell about it.

Mr. KENNEDY. I considered that the allegations related to me in that phone call were then and are now not credible. As I testified earlier, I had never, ever from any source heard the name David Hale or Capital Management in connection with Madison Guaranty or the Whitewater matters.

Senator FAIRCLOTH. Did it bother your conscience any to speak with the Justice Department, a high official regarding a specific case, particularly where the President was involved? Did that give you little pangs?

Mr. KENNEDY. Senator, my conversation with Webb Hubbell, I would not characterize it that way, the way you characterized it.

Senator FAIRCLOTH. How would you characterize it?

Mr. KENNEDY. I spoke with Webb Hubbell almost daily on a variety of issues, but primarily involving Justice Department appointments. In the course of one of those conversations, probably a week after my conversation with Mr. Coleman, I simply asked him had he ever heard the name David Hale in connection with Whitewater, and he said no, and that was the sum and source of it.

Senator FAIRCLOTH. All right. I'll move on.

According to Deborah Gorham, Vince Foster's personal secretary, she placed in Bernie Nussbaum's safe an envelope with these specific words on the outside: "For eyes only, not to be opened, William Kennedy." This was discovered after Vince Foster's death. Can you tell us what was in the document?

Mr. KENNEDY. I cannot, Senator.

Senator FAIRCLOTH. Why can't you?

Mr. KENNEDY. I don't know.

Senator FAIRCLOTH. You never did get it?

Mr. KENNEDY. No, sir.

Senator FAIRCLOTH. Have you had any curiosity since you've heard about it as to find out who did get it?

Mr. KENNEDY. Senator, you would be asking me to speculate, which I decline to do. I don't know about this document.

Senator FAIRCLOTH. What was going on at the White House? What kind of mindset was pervading the people there when a document such as this, for your eyes only, to be opened by you and this very credible woman, Deborah Gorham, says she put it in his safe for you and now, here with all the controversy as to Vince Foster's death and all of the other implications, it has disappeared, magic, it's gone, you didn't see it, Nussbaum didn't see it——

Mr. KENNEDY. Senator, you're asking about mindsets. I can't address mindsets.

Senator FAIRCLOTH. Could you address why, when you've heard about this since then, you didn't go to Nussbaum and find out what happened to it? Did you?

Mr. KENNEDY. Senator, I first learned about some document in Bernie's safe after I had left the White House Counsel's Office and was back in Little Rock. I didn't have the ability to go anywhere to get such a document.

Senator FAIRCLOTH. Mr. Chairman, I think it's incumbent upon us to bring Mr. Nussbaum back to see if he knows what happened to it.

Mr. Kennedy, on November 5, 1993, at about the time that news reports were beginning to occur on the David Hale story and after the White House was put on notice about the RTC criminal referrals, you along with Bruce Lindsey, Bernie Nussbaum, Steve Engstrom and others met with David Kendall in Kendall's office; is that correct?

Mr. KENNEDY. Yes, sir.

Senator FAIRCLOTH. Can you tell me who else was at the meeting?

Mr. KENNEDY. Can you go over that list of names again, Senator?

Senator FAIRCLOTH. Lindsey, Nussbaum, Engstrom, Kendall and you.

Mr. KENNEDY. I believe Neil Eggleston was there and Jim Lyons was there as well.

Senator FAIRCLOTH. What was discussed at the meeting?

Mr. KENNEDY. Senator, I have been instructed that the meeting is covered by the attorney-client privilege and I've been instructed to abide by that privilege.

The meeting occurred in David Kendall's office. I believe it was on a Friday. The duration of the meeting, I believe, was maybe 2 hours, maybe a little bit longer. The purpose of the meeting was to impart information to the Clintons' personal lawyers. I don't think I can go much beyond that. I've been instructed that the contents of that meeting are covered by the attorney-client privilege.

Senator FAIRCLOTH. You were there to impart information to the President's personal counsel. Is that what you said?

Mr. KENNEDY. That was the purpose of the meeting, Senator.

Senator FAIRCLOTH. Who told you to take privilege?

Mr. KENNEDY. The instructions, I believe, have come from the White House and Mr. Kendall, the Clintons' personal lawyer.

Senator FAIRCLOTH. You were having these pangs of conscience a while ago—do you think that you as a Government attorney should be attending meetings with the President's private attorney on Government time and then claim privilege for it?

Mr. KENNEDY. Sir, the privilege belongs to the client. I take my ethical responsibilities as seriously as anyone else I know. I am not——

Senator FAIRCLOTH. Who was the client here?

Mr. KENNEDY. We were there to impart information to the Clintons' personal lawyers.

Senator FAIRCLOTH. Who would be your client?

Mr. KENNEDY. I was not at that meeting representing anyone.

Senator FAIRCLOTH. You are taking privilege on the part of your client, so who is the client you're taking the privilege on?

Mr. KENNEDY. Senator, I am not asserting the privilege. I have been instructed that this meeting is covered by the attorney-client privilege. That privilege imparts to the Clintons, I believe, and until I am instructed that it's been waived, I am not entitled to discuss the substance of that meeting.

Senator FAIRCLOTH. Who is Steve Engstrom?

Mr. KENNEDY. Steve Engstrom is a lawyer in private practice in Little Rock.

Senator FAIRCLOTH. What was the purpose of him being at the meeting?

Mr. KENNEDY. He was there as the Clintons' counsel, I believe.

Senator FAIRCLOTH. Did Mr. Foster, Vince Foster, ever tell you he was working on personal legal matters for the Clintons?

Mr. KENNEDY. The short answer would be yes, I knew he was working, for example, on the formation of a blind trust and that has both public and personal implications.

Senator FAIRCLOTH. Did he ever say to you that some of the things he was working on was troubling him, giving him a problem?

Mr. KENNEDY. No, sir.

Senator FAIRCLOTH. Mr. Chairman, I have no further questions here, but I think the fact that this envelope specifically was noted to Mr. Kennedy, that it has flat disappeared and that Ms. Gorham remembers distinctly putting it in Mr. Nussbaum's safe is reason enough that Mr. Nussbaum ought to come back and tell us what happened to it.

The CHAIRMAN. I will entertain ascertaining what, if anything, took place with that envelope and we'll ask staff to review all of the testimony to see if we can find it.

Mr. Kennedy, do you have any knowledge of this? Are you aware that there was any kind of communication addressed to you?

Mr. KENNEDY. Mr. Chairman, I have never seen the interior of the safe in the Counsel's Office. I don't know what was in it. I did not know until Ms. Gorham's testimony that such an envelope was in that safe. I'm sorry, I cannot shed any light on this. I don't know what it was. I don't know what its purpose was. I don't know what happened to it.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. In the moment that's remaining, Mr. Kennedy, I want to just nail down something regarding this meeting of November 5th before we get back into the discussions with Mr. Coleman.

Who asked you to go to the meeting?

Mr. KENNEDY. Mr. Nussbaum.

Mr. CHERTOFF. Your testimony to Senator Faircloth was that you were not there representing somebody; correct?

Mr. KENNEDY. I was there to impart information to the Clintons' personal lawyers.

Mr. CHERTOFF. You were not there representing somebody; correct? You just said that.

Mr. KENNEDY. I was there to impart information to the Clintons' personal lawyers.

Mr. CHERTOFF. I am going to ask you again because I am entitled to an answer to the question I put to you. You were not there acting as someone's legal representative; correct?

Mr. KENNEDY. Mr. Chertoff, I think that's accurate.

Mr. CHERTOFF. Now, you were not the client; correct?

Mr. KENNEDY. No.

Mr. CHERTOFF. So you were there as a witness, in effect, or someone with information?

Mr. KENNEDY. I was there as someone with information, yes, sir.

Mr. CHERTOFF. Did that include the information you had obtained from Mr. Coleman in your discussions with him in August?

Mr. KENNEDY. I cannot testify, Mr. Chertoff, about the contents of that meeting. It's covered by the attorney-client privilege.

The CHAIRMAN. He didn't ask you to testify about the contents. What he asked you was whether you were there in an official capacity representing somebody. You said you were not. Then Mr. Chertoff asked you whether you imparted information that you received from Mr. Hale's lawyer. Now, that certainly doesn't lie within the attorney-client privilege, and I'm going to ask you to answer the question.

Senator SARBANES. Mr. Chairman, can I be heard?

Mr. KENNEDY. Mr. Chairman, I've got to decline to answer that question. I interpret that question as Mr. Chertoff asking me what transpired at that meeting.

The CHAIRMAN. No, he's not asking you that.

Mr. CHERTOFF. Let me reformulate it. We will eliminate any potential problem with this.

Mr. Kennedy, as of the time you walked into the meeting; before you said a word, as of the time you walked into the meeting, what was the information you had in your head that was relevant to Whitewater or any other personal matter of the President of the United States relating to Whitewater or David Hale or Madison Guaranty?

Mr. KENNEDY. What was in my head related to legal services I had performed for the Clintons in 1991.

Mr. CHERTOFF. Back in the campaign?

Mr. KENNEDY. No, sir. In advance of the campaign.

Mr. CHERTOFF. This was legal services you performed as the Clintons' lawyer in connection with what matter?

Mr. KENNEDY. In connection with the Whitewater real estate development.

Mr. CHERTOFF. I think at this point my time is up. We'll pick this up.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I understand that Ms. Sherburne has communicated with Michael Chertoff about seeking a meeting which, I gather, is the second time that this has been done with Mr. Kendall and herself, to discuss these questions with respect to representation of the Clintons by their private counsel as it pertains to the November 5th meeting. Am I correct on that score?

Mr. CHERTOFF. Senator, what we have, I guess, in terms of this letter, is a series of letters back and forth in which we indicated an interest in obtaining the facts of what occurred at the meeting, as well as a memorandum that apparently memorializes it, based in part upon a public statement made by one of Ms. Sherburne's associate counsel in both AP and the New York Post that to some degree discusses the subject matter of the meeting and also indicates—this is from the New York Post—that the White House was prepared to answer specific questions about what was discussed at this session.

I had written to Ms. Sherburne suggesting that this seemed to me to be a waiver of the privilege. She wrote back asking to meet. I think at this point where we stand is I have not sought to ask questions of Mr. Kennedy that would get into the actual communications in the meeting, but as I think even Ms. Sherburne would agree, and it's made clear in her letter, we are probing the foundation, the foundational questions about who sent Mr. Kennedy there, in what role was he there, who else was there, that are necessary in order to know whether there can even be a valid attorney-client privilege here.

Senator SARBANES. I guess the point I'm interested in finding out, since the letter states that there was an earlier letter of November 29th, this is Ms. Sherburne's letter, urging that we meet, meaning you and she and, I take it, Kendall, and she says "as the Chairman suggested during the questioning of Mr. Lindsey, to explain the claims of privilege related to this meeting."

Then she goes on in the next paragraph:

> The White House remains willing to continue working with you, as we have throughout the Committee's investigation, to ensure the Committee's appropriate access to information. As I indicated earlier, because this particular meeting involves the representation of the Clintons by their private counsel, and certain of the claims of privilege relate to that representation, it is necessary to include Mr. Kendall in any discussion about the November 5 meeting.

I was wondering, since she goes on to say that she and Kendall are prepared to discuss these matters as soon as they can schedule a meeting, whether such a meeting is going to be held? It would seem to me that it would make sense.

Mr. CHERTOFF. Senator, I certainly hope so. I think it will be of great assistance to get information such as that Mr. Kennedy just gave us. For one thing, it's highly pertinent that Mr. Kennedy acknowledges his presence there was not as a lawyer representing someone or as a client, but someone——

Senator SARBANES. Of course, he has just said that when he went into the room, the thing that was in his mind in terms of information to be imparted at the meeting was his representation of the Clintons in 1991. I think that was in response to your question, so——

Mr. KENNEDY. I was there——

Senator SARBANES. I take it, though, while he was not, I guess, their lawyer when he walked into the room, so to speak, as Kendall was their lawyer, he was going, as it were, to impart information, at least he thought, I take it from his answer—I will ask him a question.

When you went in, I take it, as you said before, in your own mind, you thought you were going in to impart information from when you represented the Clintons as a lawyer?

Mr. KENNEDY. That is correct. I was there to impart information that I had learned while performing, acting as the Clintons' counsel in 1991.

Senator SARBANES. I would just say, I think it would probably be helpful, we went through this with Lindsey and now we're going through it with Kennedy. It would seem to me helpful if Counsel, Mr. Chairman, if Mr. Chertoff and Mr. Ben-Veniste had this meeting with Ms. Sherburne and Mr. Kendall that was requested.

The CHAIRMAN. I will ask Counsel to see if they can't arrange that with the White House.

Mr. BEN-VENISTE. We will try to do that immediately following the hearing today.

The CHAIRMAN. We will ask at the recess, Counsel can contact Ms. Sherburne to set up a meeting. Mr. Ben-Veniste, do you have anything further?

Mr. BEN-VENISTE. Yes. I think it may be helpful, Mr. Chairman, to perhaps put into context what Senator Faircloth had raised about Vincent Foster's office, at least from the standpoint of Deborah Gorham's testimony which she gave in June 1995, and I would read starting on page 69 of her deposition:

Question: To the best of your knowledge, did Mr. Foster keep anything else in that safe?

Answer: I don't know that.

This is referring to the safe in Mr. Nussbaum's office; is that correct?

Mr. KENNEDY. As far as I know, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Did you know whether Mr. Foster had his own safe in his office?

Mr. KENNEDY. As far as I know, he did not. There was no safe in the Deputy Counsel's Office.

Mr. BEN-VENISTE. That's my recollection as well.

Mr. KENNEDY. Yes, sir.

Mr. BEN-VENISTE. Continuing with Ms. Gorham's testimony:

Answer: I don't know that. If two particular envelopes were once in his possession, thus, they were his, but those are the only two things that he gave to me that I placed on his behalf.

Question: The two envelopes, do you recall the topic? Were they sealed envelopes?

Answer: I don't know. I never looked to see if they were sealed or not.

Question: Were they—going back to our discussion earlier this morning, were they big or little envelopes?

Answer: They were 8½-by-11-sized gold envelopes.

Question: And I take it you don't know what was in them?
Answer: I do not.
Question: Do you know whether or not there was anything in them? Did they feel heavy?
Answer: I should clarify. There was writing on the outside of the envelopes which led me to believe that what was contained inside.
Question: What do you recall about the writing on the outside? What did it say?
Answer: One said 'for eyes only,' and it said 'for eyes only, not to be opened' and then it said 'William Kennedy' on one envelope.
Question: You've been describing one envelope that said 'for eyes only, not to be opened, William Kennedy'?
Answer: That's correct.
Question: Do you know anything else about that envelope?
Answer: No, sir.
Question: Were there any markings or writing on the second envelope?
Answer: It said 'Janet Reno.'
Question: Anything else?
Answer: No, sir.
Question: I take it you don't know anything about the contents of either of those envelopes?
Answer: No, sir.
Question: So the two 1-inch ring binders I believe you described came from the National Security Agency, and these two other envelopes. Anything else that you're aware of of Mr. Foster's that was in Mr. Nussbaum's safe?
Answer: No, sir.
Question: When do you think you placed the two 8½-by-11-inch envelopes that you just described in Mr. Nussbaum's safe? Can you place that in time?
Answer: I did not place them in there.
Question: I'm sorry. I misunderstood you. You didn't put those in there?
Answer: No, sir.
Question: Who did?
Answer: I have no idea.
Question: What makes you think they were at one time in Mr. Foster's possession?
Answer: I did not say they were in Mr. Foster's possession. It was those two binders that he handed to me. I'm sorry. I thought you asked me what else was remaining in the safe.
Question: Maybe I did, but let's be clear. The only thing that Mr. Foster gave you to place in the safe were the two binders; is that correct?
Answer: Yes.
Question: And in placing those in the safe you saw these other two envelopes?
Answer: That's correct.
Question: And you don't know whether those envelopes were ever in Mr. Foster's possession?
Answer: I have no knowledge.

So, in summary, without going further into this deposition, it appeared to me that at the time of Ms. Gorham's testimony, it was at least unclear whether these two envelopes were in Mr. Nussbaum's safe at the time of Mr. Foster's death. I don't think that was ever established. We can look for Mr. Nussbaum's testimony. I don't have a specific recollection about whether he was questioned on that subject, Mr. Chairman, but this was all brought out in June.

The CHAIRMAN. Senator Hatch.

OPENING COMMENTS OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman.

Good morning, Mr. Kennedy.

Mr. KENNEDY. Senator, good to see you again.

Senator HATCH. We appreciate your willingness to come before the Committee today. Thus far, it seems we have uncovered more questions during these proceedings than answers, and I would hope you can shed some light on some of these matters.

In your capacity as the former Associate White House Counsel, I want to ask you some questions about your assertion of attorney-client privilege in refusing to answer this Committee's questions on some matters. As it is generally defined, the attorney-client privilege only protects communications between a client and his attorney made in anticipation of litigation. The privilege can be asserted only by the client or on behalf of the client. Now, wouldn't you agree that a discussion can be deemed to be protected by the attorney-client privilege only if it meets those requirements?

Mr. KENNEDY. Senator, I think that is a pretty good statement of the common law surrounding attorney-client privilege. I don't necessarily know if it's totally comprehensive. It is a pretty complicated area.

Senator HATCH. It is. Wouldn't you agree that a client can lose the privilege either by intentionally waiving it or by disclosing the communication to a third party? Now, that's pretty standard law.

Mr. KENNEDY. As far as saying it's standard law, yes, sir, that's correct.

Senator HATCH. With this in mind, let me examine with you the Whitewater discussions that you've chosen not to disclose based on the claim of attorney-client privilege. While serving as Associate White House Counsel, you attended a meeting on November 5, 1993 to discuss Whitewater, among other things, but at least Whitewater; is that correct?

Mr. KENNEDY. Yes, sir.

Senator HATCH. I understand that Bernie Nussbaum, Bruce Lindsey, David Kendall, Neil Eggleston, and Steve Engstrom were at that meeting; is that right?

Mr. KENNEDY. Yes, sir. That's correct.

Senator HATCH. They're all lawyers; right?

Mr. KENNEDY. Yes, sir.

Senator HATCH. Was the President at the meeting?

Mr. KENNEDY. No, sir.

Senator HATCH. Was anyone else in attendance at that meeting?

Mr. KENNEDY. I don't believe so, Senator.

Senator SARBANES. Wait a second. When you responded to Senator Faircloth, you added another name. I don't want you to give an inconsistent statement here now.

Senator HATCH. The names I mentioned were Bernie Nussbaum, Bruce Lindsey, David Kendall, Neil Eggleston, Steve Engstrom, and yourself. Was there anybody else?

Mr. KENNEDY. Jim Lyons was there, Senator. I apologize, Senator. I gave Mr. Eggleston's name, but Jim Lyons was there also.

Senator HATCH. In other words, everybody there happened to be a lawyer?

Mr. KENNEDY. Yes, sir.

Senator HATCH. Including Lyons?

Mr. KENNEDY. Yes, sir.

Senator HATCH. Who among the lawyers present were Government lawyers whose job it was to represent the Office of the President and the United States Government?

Mr. KENNEDY. Persons employed by the Government at that meeting were myself, Mr. Nussbaum and Mr. Lindsey.

Senator HATCH. OK. Which of the lawyers were private lawyers?

Mr. KENNEDY. Mr. Eggleston as well, I'm sorry.

Senator HATCH. Were the others lawyers who represented the President in a personal capacity?

Mr. KENNEDY. Yes, sir. Mr. Lyons, Mr. Kendall, Mr. Engstrom.

Senator HATCH. Since the privilege can only be asserted by the client, are you now declaring to the Committee that President Clinton has instructed his representatives who instructed you, to assert attorney-client privilege over the meetings and discussions that were held on November 5, 1993?

Mr. KENNEDY. Senator, I have been instructed that that meeting is covered by the attorney-client privilege, yes.

Senator HATCH. By people at the White House?

Mr. KENNEDY. And by Mr. Kendall.

Senator HATCH. By the President or by others at the White House and Mr. Kendall?

Mr. KENNEDY. I've been instructed by staff of the White House Counsel's Office.

Senator HATCH. If the President has not ordered you to assert the privilege directly, then who has? Would you name who has?

Mr. KENNEDY. My primary discussions have been with Ms. Sherburne on this matter, Senator.

Senator HATCH. Anybody else?

Mr. KENNEDY. No, sir. Primarily Ms. Sherburne.

Senator HATCH. Have you ever waived the privilege with respect to this meeting?

Mr. KENNEDY. No, sir.

Senator HATCH. Why do you believe that your communications during that meeting were in anticipation of litigation? Were you expecting litigation over Whitewater-related matters?

Mr. KENNEDY. Senator, I have to disagree with your characterization of anticipation of litigation. I have been instructed and am standing on the instructions I have received that the contents and the substance of that meeting is covered by the attorney-client privilege, and until I'm instructed otherwise, I must abide by those instructions.

Senator HATCH. Working as Associate White House Counsel, you were a Government employee; right?

Mr. KENNEDY. Yes, sir.

Senator HATCH. As you know, under ethics rules Government attorney employees cannot take private clients while they are working on Government time?

Mr. KENNEDY. Yes, sir.

Senator HATCH. Therefore, it seems to me that the attorney-client privilege cannot apply to personal matters that are discussed between the President and Government lawyers or attorneys. Do you agree that while acting as Associate White House Counsel, you could not have been President Clinton's personal attorney working on these private matters?

Mr. KENNEDY. One second, Senator.

Senator, with all due respect, you're taking me where I don't want to go, I don't feel qualified to go, and I don't think I should go. I was there to impart information that I had obtained while acting as a private lawyer for the Clintons. I was there at that meeting in my capacity as a former lawyer for the Clintons.

Senator HATCH. Did Mr. Kendall tell you to assert the privilege, acting on orders from the President?

Mr. KENNEDY. You would have to take that up with Mr. Kendall.

Senator HATCH. You don't recall him telling you that?

Mr. KENNEDY. I have not spoken directly to Mr. Kendall about this, Senator.

Senator HATCH. The fact of the matter is President Clinton has a private attorney, and that's Mr. Kendall of Williams & Connolly; right?

Mr. KENNEDY. Yes, sir.

Senator HATCH. So isn't it true that there could not have been a private attorney-client relationship between the President and you at that point, at least relating to the President's private legal affairs, while you were Associate White House Counsel?

Mr. KENNEDY. Senator, again——

Senator HATCH. The fact is, there couldn't have been.

Mr. KENNEDY. That's what makes horse races, Senator. I think people could disagree with the assertion you just made.

Senator HATCH. I don't think so. Either you're a private attorney for the President or you're not, and if you're not, then you can't assert the privilege.

Mr. KENNEDY. For example, Senator, I could not discuss the legal work that I had done for the Clintons even now—the legal work I had done in 1991, even now without a waiver. So I don't necessarily agree with what you're saying.

Senator HATCH. I'm wondering if there were any communications that would be protected by attorney-client privilege at that meeting, even if you had an attorney-client privilege with the President at the time, which I do not believe would be the case under the law. The only thing that would be protected would be communications between the client, the President, and yourself. Nothing else would be protected.

Mr. KENNEDY. Senator, again, I don't think I agree with you. I don't want to get into a legal debate because, quite honestly, I don't feel qualified to do so. Everybody in that room in one form or another either had been or was Counsel for the Clintons, and I believe that I must again abide by my instructions, which are that meeting is covered by the attorney-client privilege.

Senator HATCH. But you have testified that President Clinton was not present at this meeting; right?

Mr. KENNEDY. That is correct.

Senator HATCH. Did you or anyone else present at the meeting communicate with the President during the meeting, either by telephone, fax or any other communication device?

Mr. KENNEDY. No, sir.

Senator HATCH. Did you receive or examine any written memoranda from the President during that meeting?

Mr. KENNEDY. From the President, no, sir.

Senator HATCH. During this meeting, did you draft a memoranda or other written document to the President?

Mr. KENNEDY. No, sir.

Senator HATCH. Did you do it after the meeting?

Mr. KENNEDY. No, sir.

Senator HATCH. It seems to me that there were no oral or written communications between attorney and client that could receive the privilege under your statements. Did President Clinton and you, his supposed private attorney, communicate in any way during the meeting?

Mr. KENNEDY. During this meeting, were there any communications between me——

Senator HATCH. Yes.

Mr. KENNEDY. No, sir.

Senator HATCH. Or anybody else in the meeting?

Mr. KENNEDY. Not as far as I know, sir.

Senator HATCH. Let me address the issue of the notes that you took in the meeting on November 5, 1993. If you wanted to keep a document privileged, you wouldn't ordinarily release portions of it to the press, would you?

Mr. KENNEDY. Would I?

Senator HATCH. Yes.

Mr. KENNEDY. No, sir.

Senator HATCH. Isn't it true that releasing some of the contents of your notes to the press might constitute a waiver of the privilege via third party discussion?

Mr. KENNEDY. No, sir.

Senator HATCH. You don't doubt that, do you?

Mr. KENNEDY. I think under certain circumstances, it could be a waiver.

Senator HATCH. Sure. Last week, White House spokesman Mark Fabiano, while addressing the press, answered two questions relating to the substance of your November 5, 1993 meeting on Whitewater. Fabiano said information was based on your notes, according to the accounts I have read. Under those circumstances, hasn't Fabiano waived your privilege by divulging what happened during that meeting?

Mr. KENNEDY. Senator, I can't answer that question. I haven't seen those reports. I don't know what he said. I don't know what he did. I don't know the source of whatever it was that he said or did. I'm unable to answer that question.

Senator HATCH. Of course, you could claim that your work or notes of the meeting are protected by the work product privilege. The work product privilege protects an attorney's written work and his thoughts concerning a case involved in litigation. I assume you're familiar with the attorney work product privilege?

Mr. KENNEDY. Generally, yes, sir.

Senator HATCH. Isn't it true that this privilege can be overridden for good cause, such as an inability to acquire the documents from any other source?

Mr. KENNEDY. Senator, I'm sorry. Would you please repeat your question?

Senator HATCH. Isn't it true that this privilege can be overridden for good cause, such as an inability to acquire the documents from any other source?

Mr. KENNEDY. Senator, I believe that to be the state of the law.

Senator HATCH. I think it is. Couldn't the work product privilege be overridden if this Committee could not obtain these documents in any other way?

Mr. KENNEDY. I believe a court would have the power to do that, Senator.

Senator HATCH. With this in mind, I want to reemphasize one point. A person, that is the client, can also choose to waive the attorney-client privilege; right?

Mr. KENNEDY. Yes, sir. That is correct.

Senator HATCH. In this case, the President, if he wants to, can choose to waive that privilege?

Mr. KENNEDY. That is correct, Senator.

Senator HATCH. Assuming the attorney-client privilege protected some of the President's discussions, if the President wanted to open those discussions to the public, he can always waive the privilege if he wanted to, couldn't he?

Mr. KENNEDY. Yes, sir. That is correct.

Senator HATCH. Even though the President has promised to cooperate fully with this Committee and to be open on these issues with the American public, according to you, he is now attempting, according to your instructions from the President's advisors, to assert a privilege over what happens to be a very important discussion of Whitewater matters?

Mr. KENNEDY. Senator, I must respond this way. Even the President of the United States is entitled to legal representation.

Senator HATCH. I have no problem with that, of course.

Mr. KENNEDY. I know you don't, Senator, and you of all Members of this Committee probably know that better than anyone.

Senator HATCH. Right.

Mr. KENNEDY. The purpose of this meeting was to get his lawyers up to speed and he's entitled to that. Indeed, he could not receive effective representation without that, and I must stand on my instructions.

Senator HATCH. Let me just say that based on my understanding of attorney-client privilege, it does not seem to me that any discussions you had while you were Associate White House Counsel were privileged and, therefore, I worry a little bit about your refusal to answer. I know you're acting under direct advice, and you're replying here under direct instructions from the White House, but I don't see how, as Associate White House Counsel, any of your discussions would be privileged.

Now, I suggest that you and the White House seriously consider this assertion of attorney-client privilege. I'm concerned that assertions such as this, which do not have any legal basis behind them, will prevent the American people from really learning what happened here. This is not only in the best interest of Congress, but of the President himself so he can put Whitewater behind him, if that's possible.

Mr. KENNEDY. Senator, I respect the content of your statement and know that you're genuine in your sincerity. I think that I, of course, have not been here day in and day out as you all have. I think that any impartial observer, myself, in my opinion would believe that the President has been more than forthcoming and open and made information available to this Committee. I do say, again, he's entitled to have a lawyer. He's entitled to have his lawyer understand what's going on and that's what that meeting was about.

Senator HATCH. I agree with that, but his lawyer wasn't you in this case. Have you ever spoken to the President about his involvement with Whitewater, Madison Guaranty, Judge David Hale, Jim Guy Tucker or Jim McDougal?

Mr. KENNEDY. No, sir, I have not.

Senator HATCH. Have you ever spoken to David Kendall about the President's involvement with Whitewater, Madison Guaranty, David Hale, Jim Guy Tucker or Jim McDougal?

Mr. KENNEDY. Yes, I have.

Senator HATCH. Have you ever spoken to Webb Hubbell about the President's involvement with Whitewater, Madison Guaranty, David Hale, Jim Guy Tucker or Jim McDougal?

Mr. KENNEDY. As I previously testified, I asked Webb after my conversation with Randy Coleman about whether or not he had ever heard of David Hale, Capital Management and any interaction between that individual or that entity with Madison or Whitewater matters to which he responded in the negative.

Senator, the way you phrased your question, it's awfully broad.

Senator HATCH. It is broad and it's deliberately so.

Mr. KENNEDY. Yes, sir. I had some discussions back in 1992 with Webb with regard to the campaign's response to Whitewater—The New York Times story and the campaign's response. Other than those two conversations, I cannot remember ever discussing Whitewater with Web.

Senator HATCH. The first conversation was when and where?

Mr. KENNEDY. In 1992, when we were both at the Rose Law Firm.

Senator HATCH. This was with Webb Hubbell?

Mr. KENNEDY. Yes, sir.

Senator HATCH. You didn't have any while he was serving in the White House?

Mr. KENNEDY. Mr. Hubbell never served in the White House, Senator.

Senator HATCH. Excuse me, while you served at the White House and he served at Justice?

Mr. KENNEDY. Just the one conversation where I inquired of him if he had ever heard of David Hale or Capital Management in any way in connection with the Whitewater or the Madison Guaranty matters.

Senator HATCH. With regard to Mr. Kendall, was your sole discussion with him on this particular occasion on November 5th?

Mr. KENNEDY. I believe that's correct, Senator.

Senator HATCH. You never talked to him otherwise about these matters?

Mr. KENNEDY. No, sir, I don't believe so.

Senator HATCH. I think my time is up.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, in light of the questioning that Senator Hatch followed, I don't think he was here previously when we discussed the Sherburne letter. I would like to bring that to his attention.

Senator HATCH. What is this, the Sherburne letter?

Senator SARBANES. It is a letter to Mike Chertoff in which she says:

I received the Chairman's letter late this evening, expressing an intention to question Mr. Kennedy about a meeting among lawyers for the President that took place at David Kendall's office on November 5, 1993. I was surprised that the Chairman's letter does not respond to my November 29 letter urging that we meet, as the Chairman suggested during the questioning of Mr. Lindsey, to explain the claims of privilege related to this meeting.

Then, in the next paragraph, she says:

The White House remains willing to continue working with you, as we have throughout the Committee's investigation, to ensure the Committee's appropriate access to information. As I indicated earlier, because this particular meeting involves the representation of the Clintons by their private counsel, and certain of the claims of privilege relate to that representation, it is necessary to include Mr. Kendall in any discussion about the November 5 meeting.

She concludes the letter by saying:

Mr. Kendall and I are prepared to discuss these matters with you as soon as we can schedule a meeting.

The Chairman indicated that——

Senator HATCH. I am familiar with the letter, Senator.

Senator SARBANES. The Chairman indicated——

Senator HATCH. My point is——

Senator SARBANES. —that he thought it was advisable, as I think it's advisable, that such a meeting take place and, as I understand it, arrangements will be made by Counsel promptly to do so.

Senator HATCH. OK. I just thought that it's important to make sure what the ground rules are and what the statements are so that the Committee can make whatever determination they decide to make with regard to whether there is a privilege here, either attorney-client or work product privilege. Personally, I don't think there is, and I don't think the law thinks there is, and I think Ms. Sherburne is absolutely wrong in her letter.

Senator SARBANES. Mr. Kennedy, you represented the Clintons, right, in 1991 as their lawyer?

Mr. KENNEDY. Yes, sir.

Senator SARBANES. You said in response to a question by Mr. Chertoff, when you went to the meeting, in your mind you were assuming that you were going to impart information about that representation?

Mr. KENNEDY. Yes, sir.

Senator HATCH. See, I don't have any problem with the privilege being asserted for anything that occurred when he was actually acting as the personal attorney for the President. I do have a problem with a meeting where he acts as Associate White House Counsel. He takes notes and, somehow or another, a member of the press gets a hold of some of those notes. To me, that waives the privilege.

Senator SARBANES. I understand that, and that's another issue, but surely——

Senator HATCH. It's an important issue.

Senator SARBANES. I don't dispute that, but the thing I was trying to get at is the fact that he's now working for the Government doesn't eliminate the attorney-client privilege for matters he did when he was a private attorney. If you represented someone——

Senator HATCH. The President can waive it, but——

Senator SARBANES. If you represented someone and were elected to the U.S. Senate and the person you represented was involved in

something and you needed to impart information to him from your representation, the fact that you are no longer his lawyer, now a U.S. Senator, would not preclude the assertion of the attorney-client privilege.

Senator HATCH. I don't have any problem with that. The questions are directed at what happened while he was Associate White House Counsel, clearly not the President's private attorney, in a meeting where there were others who were clearly not the President's private attorney, but people employed by the Government, where literally the attorney-client privilege does not exist, and neither does a work product privilege. Even if it does, it can be waived. In this case, it probably was waived because his notes had been released to the press, or at least to certain people in the press or people who are not private attorneys for the President.

That's the thrust of the questions here today. I think they're important questions. I think this issue should be resolved one way or the other because as I understand the law, there's no question that there's no attorney-client privilege for that particular meeting.

Senator SARBANES. I think if Mr. Kennedy went to impart information that he obtained when he was the Clintons' lawyer in private practice, the attorney-client privilege would apply to the imparting of that information. The fact that he was then holding a Government position would not preclude that.

Senator HATCH. That's different. We're talking about things that may not have been protected by a prior privilege.

The CHAIRMAN. Let me ask you one question.

Senator SARBANES. Mr. Chairman, if I could just finish, I think the way to get at this, if I may say to Senator Hatch, is to have this meeting that Ms. Sherburne suggests in this letter.

Senator HATCH. As I read Ms. Sherburne's letter, I think she's absolutely wrong on the law, but I don't think that meeting is a bad idea. I think that ought to be done.

Mr. BEN-VENISTE. May I ask——

The CHAIRMAN. I would like to ask a question here. Mr. Kennedy, did you at this meeting bring up the phone conversation that you had with Mr. Coleman on the two occasions?

Mr. KENNEDY. Mr. Chairman, I don't think I can answer that question because of my instructions regarding the attorney-client privilege.

The CHAIRMAN. Now, you understand, I am asking you about a phone conversation that you received while you were at the White House in the capacity of what, Counsel? You were in the Counsel's Office?

Mr. KENNEDY. Yes, sir. When I received the phone call from Randy Coleman, I was Associate Counsel to the President.

The CHAIRMAN. I am asking you at this meeting whether you brought that up? Did you discuss it?

Mr. KENNEDY. Mr. Chairman, I would very much like to answer your question, I want to make that clear, but I believe your question is covered by my instructions which I must abide by.

The CHAIRMAN. When you say your instructions that you must abide by, who has instructed you and on what basis? You are an Associate Counsel to the White House, you are a distinguished law partner in a major law firm. Who is giving you this instruction?

Mr. KENNEDY. My instructions come from the White House and from Mr. Kendall.

The CHAIRMAN. Mr. Kendall has no relevance as it relates to a conversation, would you agree with me, as a private attorney covering that question which I have put to you? In your capacity as Counsel in the White House, Associate Counsel, you received a phone call from Mr. Hale's lawyer; is that right? What's his name, Randy Coleman?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. Now, you then reported that conversation to Mr. Nussbaum; right?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. You took notes about that conversation; right?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. You related part of that to us today; is that correct, and in depositions?

Mr. KENNEDY. Yes, sir.

The CHAIRMAN. OK. Now, I'm asking you whether you related those conversations and what took place with Mr. Hale's lawyer, Mr. Coleman, to the participants at that meeting?

Mr. KENNEDY. Mr. Chairman, I'm interpreting your question——

The CHAIRMAN. Mr. Kendall can't instruct you not to answer this question because he has no—what is the connection between you and Mr. Kendall as it relates to whether you gave information that you received when you were at the White House? I mean, you are not asserting that, are you?

Mr. KENNEDY. Mr. Chairman——

The CHAIRMAN. Wait a minute. I want to understand the basis for your assertion of privilege, and why you can't go forward. Are you saying that you can't answer me because Mr. Kendall asked you to assert the privilege on behalf of his client?

Mr. KENNEDY. Mr. Chairman, I am interpreting your question—and I think I am hearing you correctly—you are asking me was the Randy Coleman phone call discussed at this meeting, and I have responded, as I have responded consistently, that under my instructions——

The CHAIRMAN. Who instructed you to raise the issue of privilege to my question about whether you related the information of the telephone calls that you received from Mr. Hale's lawyer, Mr. Coleman. On whose behalf are you asserting this privilege, under whose instructions?

Senator SARBANES. Mr. Chairman——

The CHAIRMAN. Go ahead.

Mr. KENNEDY. Mr. Chairman, my instructions come from both the White House and Mr. Kendall.

Senator SARBANES. Mr. Chairman——

The CHAIRMAN. You are saying the White House. You are raising this on behalf of the White House; is that right?

Mr. KENNEDY. I have been instructed by the White House that this meeting is covered by the attorney-client privilege, and my understanding is that Mr. Kendall has so instructed me as well.

The CHAIRMAN. We will return to that. I just wanted to make an observation. My question didn't relate to what was discussed at this meeting, although I think it's a proper subject. I will not con-

cede that, but as it relates to whether you related this conversation and the information that you obtained when you were Associate White House Counsel, it doesn't seem to me that you could receive an instruction from Mr. Kendall that would prevent you from answering the Committee's question. What is the relevance? You didn't receive that information in your capacity as an attorney for the Clintons, did you?

Mr. KENNEDY. Mr. Chairman, I received that phone call, as I've testified, at the White House, but my instructions come from——

The CHAIRMAN. Go ahead.

Mr. KENNEDY. My instructions, again, come from the White House and from Mr. Kendall, that the contents of that meeting are covered by the attorney-client privilege, and you're asking me was this discussed at the meeting and I must decline to answer.

Senator HATCH. Mr. Chairman, could I ask one last question?

The CHAIRMAN. Senator Sarbanes would like to make an observation and we'll return.

Senator SARBANES. I have some time, I think.

The CHAIRMAN. Certainly, Senator Sarbanes, you will have—take the light off, please. Senator, if I might, I am going to ask that we put in all of the letters between our Counsel and the White House. I think there is a series of letters and Ms. Sherburne's responses from November 28th through December 4th. Just for the record, we'll put them all in.

Senator SARBANES. I think that's a very good idea. In that letter of December 4th—that's why I think this meeting is important—she says:

> Mr. Kennedy, in the meanwhile, has been instructed by the White House and by Mr. Kendall that he may answer questions about the attributes of the meeting, which establish the basis for the privilege claim (who attended, its duration and purpose, how it came about, etc.), but not the substance of the meeting.

Now, Mr. Kennedy is under instructions and he's trying to abide by his instructions, and it seems to me that the way to move on this issue now is to have the meeting that's been suggested here. If he gets into discussing some aspect of the substance of the meeting, then the assertion can be made that he's waived all attorney-client privilege for the entire substance of the meeting. He obviously has to be careful, and it seems to me that he's trying to be prudent in this matter and the way for the Committee to deal with it is pick up on this request by Ms. Sherburne that she and Kendall meet with Counsel.

The CHAIRMAN. I am going to ask that Counsels and Ms. Sherburne attempt to do something to——

Senator HATCH. I think that's right.

The CHAIRMAN. —facilitate this.

Senator HATCH. If I could ask a couple of other questions. You took notes at this meeting; right?

Mr. KENNEDY. Yes, sir.

Senator HATCH. I presume you've kept those yourself?

Mr. KENNEDY. I believe they're at the White House, sir.

Senator HATCH. At the White House?

Mr. KENNEDY. Yes, sir.

Senator HATCH. They are not with the President, then? They are not with either you or the President but with the White House in general?

Mr. KENNEDY. One second, Senator.

Senator, one second, please.

Senator HATCH. Sure.

Mr. KENNEDY. Senator, I apologize. We had to run this to earth. My counsel have the original of those notes; in other words, my lawyers do. Copies have been delivered to the White House and to Mr. Kendall.

Senator HATCH. The White House doesn't have the privilege. The President does, but the White House doesn't. One issue that I find problematic is that Mr. Fabiano, the Communications Director at the White House, had access to those notes and has actually talked about them to the press. I don't see how you can claim that there's a privilege here.

In any event, the President can waive this privilege and disclose them if he wants to, and so I suspect you'll have to have that meeting between Counsel. I personally believe there's no privilege in any way, shape or form here. But be that as it may, I've done the best I can to resolve it.

The CHAIRMAN. I would hope that we could resolve this and ascertain exactly how the privilege is waived, whether it's from the White House or the President's personal lawyers.

I would suggest, Mr. Kennedy, I find it very difficult—and we may have to have you come back after you sit down with your Counsel. Of course, we're going to see if we can't make some headway this afternoon with White House Counsel and Mr. Kendall and our Committee's Counsel, but it just seems to me that as it relates to that very narrow question that they put to you, whether you imparted information about the telephone conversations that you had with Mr. Coleman, I have a difficult time—and I do not claim to have the legal expertise or background of some of my colleagues, our distinguished Counsels, and certainly the Chairman of the Judiciary Committee, Senator Hatch, who is a distinguished attorney in his own right—understanding the basis for your refusal to answer the question.

You have already testified about the nature of the conversation with Mr. Coleman. You have given depositions with respect to it, and you related this at a meeting to someone else. So how can you now cloak that in privilege, whether you brought that up, particularly since we are not asking you to discuss those matters in which you may have represented the Clintons and had some information in your prior capacity as their counsel back in 1991. So I don't know.

I turn to my friend and colleague, Senator Hatch, and ask him whether he believes—Senator—he's finding out. Again, we're trying to resolve this. Do you believe that the question to whether he brought up the conversation that Mr. Kennedy had with Mr. Coleman, who was Mr. Hale's lawyer, would be privileged?

Senator HATCH. Well, I don't think it is. I don't think under the law it is, and I don't think anybody can make a credible case that it is.

Mr. BEN-VENISTE. Mr. Kennedy, let me ask you this: Have you testified fully without holding back any information about the conversation which you had with Randy Coleman?

Mr. KENNEDY. To the best of my ability, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Coleman has also testified from his point of view to his recollections of that conversation, so we have before this Committee everything that we can learn about that conversation.

Now, the question arises whether you discussed that telephone conversation in your November 5th meeting for which you have been instructed to assert the privilege; is that correct?

Mr. KENNEDY. Yes, sir.

Mr. BEN-VENISTE. At this stage of the record, if you were to talk about what happened at that meeting, then you would be doing what Senator Hatch had suggested in the context of the possible release of notes; that is, you would be waiving the privilege without authority from your client; correct?

Mr. KENNEDY. That is correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. So that, on the one hand, we have everything that we can learn about the substance of the Coleman contact, but under your instructions from your client, you are at this point preserving the attorney-client privilege with respect to that meeting; correct?

Mr. KENNEDY. That is correct, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Now, when you came to Washington to work at the White House, I take it you had a number of clients back at the Rose Law Firm who had to make other arrangements for representation?

Mr. KENNEDY. That is correct.

Mr. BEN-VENISTE. I take it from time to time you would be in the process of briefing other attorneys to get them up to speed on those other matters?

Mr. KENNEDY. That is correct.

Mr. BEN-VENISTE. By doing that, while you were in Washington presumably, at some point when these issues would occur, getting other lawyers up to speed, were you, in your view, in any way abrogating the sanctity of the attorney-client privilege to the extent that it existed with respect to those other clients?

Mr. KENNEDY. No, sir. I was not.

Mr. BEN-VENISTE. In a sense, simply taking a Government job doesn't mean that everything that a client has told you in confidence before somehow is available in public domain if somebody only asks you the right questions?

Mr. KENNEDY. That's correct.

Mr. BEN-VENISTE. I also look forward to having this meeting so that we can try to come to closure on the basis of the privilege, and explore whether, in fact, as Senator Hatch has suggested with respect to the news articles, whether there has been an inadvertent or advertent waiver of that privilege. If that's been the case, then we need to take appropriate action. If it hasn't been the case, we need to know that as well.

Senator GRAMS. Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Kennedy, I want to attend to this before we go back and pick up the thread of the underlying questioning. When you came to the meeting on November 5th to impart information that you had developed earlier when you were in private practice, are you saying you were merely imparting information that your client had himself, or your client, Mrs. Clinton, had herself, told you or are you also imparting information you had gotten from third parties?

Mr. KENNEDY. The best way to answer that is I was imparting information that I had obtained while performing legal services for the Clintons.

Mr. CHERTOFF. You would agree with me that when you go out and perform legal services for the Clintons, while what they say to you may be privileged, if you talk to Tom, Dick or Harry, what Tom, Dick and Harry say to you is not subject to the attorney-client privilege? It may be work product, but it's not privileged?

Mr. KENNEDY. Mr. Chertoff, I don't know if I would agree with that statement in totality. I'm not sure that I would.

Mr. CHERTOFF. Let me also observe this to you because Mr. Ben-Veniste raised the question about us having both ends of this conversation with Mr. Coleman. We have yours and we have Mr. Coleman's.

Let me try to help you understand why we are focused on November 5th here. As of November 5th, we are at the collection of a number of things that have gone on. You have had your conversation with Mr. Coleman in August. The Treasury Department people have been over in September telling Mr. Lindsey and Mr. Eggleston, who were at this meeting on November 5th, about what they know concerning the confidential referrals. There's been the October meeting which Mr. Lindsey attended and, by the way, you got a copy of the memo Mr. Lindsey prepared about that October meeting with Mr. DeVore from Treasury; isn't that correct? You were cc'd on it?

Mr. KENNEDY. I believe that's correct, Mr. Chertoff. I would have to see it to be sure, but I believe I know what you're talking about.

Mr. CHERTOFF. So all this information has been collected and, of course, within a matter of days after the November 5th meeting, Mr. Eggleston, who attended the meeting on November 5th, is making a request to get documents from the Small Business Administration regarding David Hale. Quite naturally, the question occurs to people whether the information, for example, you had received from Mr. Coleman might have been a subject that was discussed in terms of directing Mr. Eggleston to see whether he could obtain information from the Small Business Administration.

We are not simply seeking to duplicate the testimony here. We are seeking to see what use was made of this because the very crux of what everybody is asking here is what is the use being made of the information? Is there any way to discern a dividing line between the White House Counsel's Office and the Rose Law Firm and the private attorneys, or is it all a single enterprise here in which everybody is working together?

Now with that in mind, I want to run through exactly what hat you are wearing when you are involved in various types of activities here. You say back in 1991, am I correct, you were representing the Clintons in terms of Whitewater; is that right?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. Who asked you to take that on?

Mr. KENNEDY. Mrs. Clinton.

Mr. CHERTOFF. What was your duty? What was your responsibility in taking this on? What was your assignment?

Mr. KENNEDY. You're asking what my assignment was?

Mr. CHERTOFF. Yes. Was it to give advice? Was it to engage in a transaction? Was it to do some kind of investigation?

Mr. KENNEDY. To do some sort of investigation.

Mr. CHERTOFF. In connection with that investigation, you contacted outside parties?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. Who?

Mr. KENNEDY. A number of outside parties.

Mr. CHERTOFF. Did you talk to Chris Wade, for example?

Mr. KENNEDY. I did not personally, no.

Mr. CHERTOFF. Did you direct someone from the firm to talk to Chris Wade?

Mr. KENNEDY. Yes.

Mr. CHERTOFF. Chris Wade was who?

Mr. KENNEDY. Chris Wade was, I believe, back then a real estate agent. I don't know if he had another job.

Mr. CHERTOFF. What was his involvement with Whitewater?

Mr. KENNEDY. I believe he was selling Whitewater lots.

Mr. CHERTOFF. What was the reason you directed someone to get in touch with Chris Wade?

Mr. KENNEDY. The request from Mrs. Clinton.

Mr. CHERTOFF. What was the request you directed someone to put to Mr. Wade?

Mr. KENNEDY. I was gathering information. I don't remember a specific request to Mr. Wade. It was gathering information from Mr. Wade.

Mr. CHERTOFF. Did Mr. Wade give you information?

Mr. KENNEDY. I believe he did, yes.

Mr. CHERTOFF. What was the information he gave you?

Mr. KENNEDY. He gave us information about the status of the Whitewater real estate development at that point in time.

Mr. CHERTOFF. He told you how many lots were sold?

Mr. KENNEDY. I believe so, and I believe he gave us information about the airplane transaction.

Mr. CHERTOFF. What was the airplane transaction?

Mr. KENNEDY. There were, I believe, a number of lots that changed hands inside the Whitewater Development itself in return for the sale of an airplane.

Mr. CHERTOFF. Sale of an airplane to who?

Mr. KENNEDY. Mr. Chertoff, back then, I'm not sure I knew. I know now from press reports. I believe the thing with the Madison Guaranty was ultimately purchased by Seth Ward, but I'm not sure I knew that back then.

Mr. CHERTOFF. The airplane was ultimately purchased by Seth Ward?

Mr. KENNEDY. I believe so.

Mr. CHERTOFF. Back in 1991 you are dealing with Mr. Wade also, in terms of finding out the status of the Clintons' obligation to pay the remaining loans on Whitewater; is that correct?

Mr. KENNEDY. The status of the real estate development, yes.

Mr. CHERTOFF. Because the Clintons were personally guaranteeing thousands of dollars worth of a loan that had been extended to Whitewater that was still unpaid; correct?

Mr. KENNEDY. That's correct.

Mr. Chertoff, may I say something? Just in light of the conversation that we've just engaged in, everything you're asking me would ordinarily be covered by the attorney-client or work product privilege, every single question. I have instructions that that has been waived, and that's why I can answer these questions.

Mr. CHERTOFF. That's good, although I don't know that your conversations with Mr. Wade would be covered by the attorney-client privilege.

Mr. KENNEDY. You and I would disagree on that.

Mr. CHERTOFF. You thought you were representing Mr. Wade?

Mr. KENNEDY. No, sir, but that's attorney work product.

Mr. CHERTOFF. Now, in connection with your discussions with Mr. Wade, were you asking Mr. Wade when he would pay off the balance of the Whitewater loan out of the money that Whitewater had so that the Clintons' obligation would be extinguished?

Mr. KENNEDY. First of all, Mr. Chertoff, I never had any direct conversations with Mr. Wade.

Mr. CHERTOFF. Through somebody else?

Mr. KENNEDY. No, sir. I don't believe that we engaged in those type of conversations, but since I didn't have direct conversations with him, I don't want you to hold me to that. I believe that all we talked to Mr. Wade about was where does this matter stand.

Mr. CHERTOFF. Who did you send to talk to Mr. Wade if not yourself?

Mr. KENNEDY. A paralegal from the firm.

Mr. CHERTOFF. Who's the paralegal?

Mr. KENNEDY. Her name is Sue Cathey-Jones.

Mr. CHERTOFF. Why did you send a paralegal instead of going yourself?

Mr. KENNEDY. Simply, we were doing a facts investigation into the real estate records. She had the expertise. It was an economical way of doing it.

Mr. CHERTOFF. Did you come to learn that Mr. Wade was in bankruptcy and couldn't pay off any part of the loan in 1991?

Mr. KENNEDY. No, sir. I don't think so.

Mr. CHERTOFF. I have a memo I would like to put up now. It's DKSN 024533. I think you either have a copy or we can give a copy to you, if Ms. Fisher can locate that. It's going to refresh your memory a little bit.

Mr. KENNEDY. Mr. Chertoff, I don't have a copy of that.

Mr. CHERTOFF. We will get a copy to you in a second. We will get it out to everybody in a second.

Just take a moment to look at that and, Mr. Chairman, we're going to pass out some other copies.

Does that refresh your memory?

Mr. KENNEDY. Yes, it does.

Mr. CHERTOFF. It is a memo from the paralegal, Cathey-Jones, you just made mention of; correct?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. In the memo, it's indicated that although the Clintons have individually guaranteed the loan, Mr. Wade when he purchased the property agreed to be responsible for paying the loan off; is that correct?

Mr. KENNEDY. The memo says that Mr. Wade had purchased part of the property and Chris Wade would be responsible for paying the remainder of the loan.

Mr. CHERTOFF. He was then in bankruptcy in 1991?

Mr. KENNEDY. The memo indicates that Mr. Wade has indicated to Mr. Proctor that he is now responsible for the note, but he wants to make payments currently because he has recently filed bankruptcy.

Mr. CHERTOFF. Were you involved in the next year, in 1992, in dealing with Whitewater-related matters when they emerged in the press?

Mr. KENNEDY. Yes, sir, for helping the campaign respond to those Whitewater press reports.

Mr. CHERTOFF. You were helping Ms. Thomases and Loretta Lynch?

Mr. KENNEDY. I was helping Loretta Lynch. I never spoke with Ms. Thomases about it.

Mr. CHERTOFF. You spoke with Mr. Hubbell about it?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. In connection with that, when that matter was raised, at that point in time, as of March 1992, am I correct that that loan had still not been paid?

Mr. KENNEDY. I believe that's correct, Mr. Chertoff.

Mr. CHERTOFF. As a matter of fact, wasn't one of the things that happened was that the Presidential financial disclosure form was amended to disclose the existence of that Whitewater loan that had not been disclosed in an earlier submission?

Mr. KENNEDY. Mr. Chertoff, I have no knowledge about that, other than it may have been reported in the press.

Mr. CHERTOFF. Now, several months later, within the next few months, the Whitewater loan was paid off by Mr. Wade?

Mr. KENNEDY. If you say so, Mr. Chertoff.

Mr. CHERTOFF. You weren't involved in that?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. You don't know how he came to get the money to pay that loan off?

Mr. KENNEDY. No, sir, I do not.

Mr. CHERTOFF. After you worked on this Whitewater matter representing the Clintons and helped out with the campaign in 1992, you then phased back out of Whitewater; is that correct?

Mr. KENNEDY. Let me see if I can answer your question this way. I performed legal services at Mrs. Clinton's request up through October 1991. Then, when there began to be press interest, I assisted the campaign in trying to respond to those inquiries.

Mr. CHERTOFF. For the balance of the year, were you involved in Whitewater-related matters in any capacity?

Mr. KENNEDY. The balance of which year?

Mr. CHERTOFF. 1992.

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. Now, in 1993, when Mr. Foster was working on the issue of Whitewater taxes as it affected the Clintons, were you discussing those matters with him in the White House Counsel's Office?

Mr. KENNEDY. I was not.

Mr. CHERTOFF. He never came to you for any advice or information?

Mr. KENNEDY. No, sir, he did not.

Mr. CHERTOFF. Do you know why it was that Mr. Foster had files with him relating to Madison Guaranty?

Mr. KENNEDY. At what point in time?

Mr. CHERTOFF. At the White House.

Mr. KENNEDY. I don't know that he did.

Mr. CHERTOFF. You have no knowledge about that?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. So until this call in August from Mr. Coleman in 1993, is it your testimony that during 1993, you had no involvement with anything relating to Whitewater or Madison Guaranty?

Mr. KENNEDY. Mr. Chertoff, it's an awfully broad statement. I don't know the dates of this. I cannot help you with the dates, but I believe that there began to be press reports about Whitewater documents in Vince Foster's office at some point following his death in July. At some point, I asked Bernie what in the world is all this about and Bernie told me he was helping prepare their tax returns.

Mr. CHERTOFF. Mr. Nussbaum told you that Mr. Foster had been working on preparing Whitewater tax returns?

Mr. KENNEDY. I believe he said Whitewater tax returns for the entity.

Mr. CHERTOFF. There's evidence that Mr. McDougal and Mr. Blair were in touch with Mr. Foster during this period before July 20th when he was in the White House. Do you know anything about that?

Mr. KENNEDY. No, sir, I do not.

Mr. CHERTOFF. Now, did you learn from Mr. Nussbaum about the issue of the Whitewater tax returns before or after your call from Mr. Coleman?

Mr. KENNEDY. Mr. Chertoff, I don't recall. I'm sorry, I don't.

Mr. CHERTOFF. When Mr. Coleman calls you in August, are you now talking to him as an old lawyer for the Clintons in your role back in 1991, or are you talking to him in your capacity of your new job as an Associate White House Counsel?

Mr. KENNEDY. Mr. Chertoff, Mr. Coleman called me. At the time he called me, I was employed by the White House.

Mr. CHERTOFF. When you called him back, in your mind, you're calling back in your capacity as a personal lawyer for the Clintons or in your capacity as an Associate White House Counsel performing official functions for the President?

Mr. KENNEDY. Mr. Chertoff, at the time, I didn't consider the issue, obviously.

Mr. CHERTOFF. Did Mr. Nussbaum talk to you about it?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. Now, when you talked to Mr. Coleman the second time, he explicitly brings up in the discussion that "your clients' name has cropped up, both of them, Whitewater Development Corporation," and I'm reading here from Ms. Nolan's notes. Ms. Nolan was the person you brought in to sit in on the phone conversation with you; correct?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. Ms. Nolan says "your clients' name has cropped up, both of them." Are you telling us that the reference to "both of them" is not a reference to both the President and Mrs. Clinton?

Mr. KENNEDY. I believe, as I testified earlier, it's probably a reference to then-Governor Clinton and Jim Guy Tucker.

Mr. CHERTOFF. Was Jim Guy Tucker ever your client?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. I am reading verbatim from Ms. Nolan's notes. "Your C's name has cropped up," arrow, "both of them," and it says under that "Whitewater Development Corporation." Since Mr. Tucker was never your client, as you have told us, to whom could "both of them" refer other than, as Mr. Coleman testified last week, a reference to the fact that both the President and the First Lady were your clients in this, for purposes of this conversation?

Mr. KENNEDY. Mr. Chertoff, can you show me where on Ms. Nolan's notes you're talking about because I can't find it?

Mr. CHERTOFF. Page 1 of the notes——

Mr. KENNEDY. 7956?

Mr. CHERTOFF. Yes, 7956. It says "quite delicately—I am informed there are some loan transactions that relate to Madison Guaranty." There's a little arrow. "Your C's name has cropped up," arrow, "both of them, Whitewater Development Corp." It's like the second paragraph. You can see it right at the bottom of the Elmo here.

Mr. KENNEDY. I see it now, Mr. Chertoff. Thank you.

Mr. CHERTOFF. Does that help you to remember that, in fact, there had been discussion that you were there talking about two clients, not just one?

Mr. KENNEDY. Mr. Chertoff, again, this is, if I read this correctly, a statement made by Mr. Coleman.

Mr. CHERTOFF. Right.

Mr. KENNEDY. Right.

Mr. CHERTOFF. So your testimony earlier regarding this very same statement by Mr. Coleman, that that was a reference to Mr. Clinton and Mr. Tucker, would you agree with me now in light of this note that the reference to both clients or two clients has to relate to the President and Mrs. Clinton?

Mr. KENNEDY. No, Mr. Chertoff, I don't agree with that. This could be "client's," apostrophe S, your client, apostrophe S.

Mr. CHERTOFF. Your client has——

Mr. KENNEDY. "Client" with an apostrophe S.

Mr. CHERTOFF. "Both of them." Do you see the "both of them"? "Both of them"?

Mr. KENNEDY. Right.

Mr. CHERTOFF. We've established Mr. Tucker wasn't ever your client; correct?

Mr. KENNEDY. No, sir. I've never represented Mr. Tucker.

Mr. CHERTOFF. Now, when Whitewater Development Corporation was mentioned, and Mr. Coleman goes on and says "they're not stopping at W. I can guarantee you that." That's, again, from Ms. Nolan's notes. In light of the work you had done on Whitewater before, your understanding being that it had come up in the campaign, did that ring a bell with you?

Mr. KENNEDY. Mr. Chertoff, I don't understand your question. I apologize. Can you ask it a different way?

Mr. CHERTOFF. "They're not stopping at" and what looks like a "W." "I can guarantee you that." Did that ring a bell with you now that Whitewater Development Corporation was mentioned by Mr. Coleman as having some relevance to what Mr. Hale might say?

Mr. KENNEDY. In my notes of this conversation, I had written down "Whitewater Development Corp." with a colon "not stopping with David Hale."

Mr. CHERTOFF. Ms. Nolan's notes say "Whitewater Development Corporation, they're not stopping at Whitewater. I can guarantee you that." Whichever version is right, having heard that Whitewater Development Corporation would be the next thing after David Hale, as your notes indicate, did that ring a bell with you in light of the fact that you had spent time in 1991 and 1992 working on Whitewater Development Corporation?

Mr. KENNEDY. I knew what Whitewater was, Mr. Chertoff, obviously.

Mr. CHERTOFF. You knew it had been a subject that you had spent a fair amount of time trying to sort out; correct?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. Having had this conversation with Mr. Coleman where he raises issues involving parking of loans; correct?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. The issue comes up about whether there was a sole source arrangement between Madison and Hale. You asked that question. Why did you ask that? On the last page of Ms. Nolan's notes, the next to last entry says "BK, not a sole source arrangement between Madison and Hale?" What did you mean when you asked that?

Mr. KENNEDY. Just a second, Mr. Chertoff. I'm looking at my notes and then I'm going to look at Beth's, if you don't mind.

Mr. CHERTOFF. Sure.

Mr. KENNEDY. Mr. Chertoff, I don't recall specifically why I asked that question. All I had written down in my notes was "sole source relationship with Madison." It could be, and this is speculation on my part, I had some familiarity with other S&L situations where entities had been created specifically so S&L's could clean up their capital structure by moving bad loans off their books, and I may have been asking him if this was such an arrangement.

Mr. CHERTOFF. Again, bearing in mind that at this time you knew your firm had been involved in representing Madison; correct?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. Were you concerned about how close the relationship was between Madison and Hale and whether Hale was involved in helping McDougal clean bad loans off of his books?

Mr. KENNEDY. Was I concerned about it?

Mr. CHERTOFF. Yes.

Mr. KENNEDY. I was trying to extract information from Mr. Coleman.

Mr. CHERTOFF. You were trying to extract information?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. After you're done with this effort to try to extract information, you talked to Mr. Nussbaum; correct?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. You talked to Mr. Hubbell?

Mr. KENNEDY. Yes, sir.

Mr. CHERTOFF. Did Mr. Nussbaum tell you to talk to Mr. Hubbell?

Mr. KENNEDY. He did not.

Mr. CHERTOFF. Did you report back to Mr. Nussbaum after you talked to Mr. Hubbell?

Mr. KENNEDY. I did not.

Mr. CHERTOFF. That's it?

Mr. KENNEDY. Later on, as I testified in my deposition, Mr. Chertoff, after David Hale got indicted, and then Mr. Coleman went to the press, I went to get Mr. Lindsey up to speed about the Coleman conversation so that he could respond to the press.

Mr. CHERTOFF. Other than Mr. Nussbaum, you didn't get anybody else in the White House up to speed until after it broke in the press?

Mr. KENNEDY. Ms. Nolan, one of my peers, went with me to bring Mr. Lindsey up to speed about the Coleman conversation so that he could respond to the press, but no, I had discussed it with my superior, and I didn't talk to anyone else about it.

Mr. CHERTOFF. As of August, it was your understanding that Mr. Clinton and Mrs. Clinton had, in fact, obtained private counsel who had taken over the Whitewater matters for Vincent Foster; is that correct?

Mr. KENNEDY. Mr. Chertoff, I don't know if that was my understanding or not. You're saying as of August. I'm not sure that was the case. I just don't know.

Mr. CHERTOFF. Weren't you aware that after Mr. Foster's death a certain segment of documents in Mr. Foster's office relating, among other things, to Whitewater had been ultimately transferred over to the President and First Lady's private lawyers?

Mr. KENNEDY. Only in connection with press reports. I did not know they had gone on at the time.

Mr. CHERTOFF. Press reports that didn't come out until sometime later. You're saying you didn't know in July and August—no one said to you some of Vince Foster's documents on Whitewater had been moved over to the President's private attorneys?

Mr. KENNEDY. That's correct, Mr. Chertoff.

Mr. CHERTOFF. Was there any request for you to impart information you learned from Mr. Coleman to the President's private attorneys in August?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. So it's not until November 5th that there's a decision that you're going to start imparting information about Whitewater to the President's private attorneys?

Mr. KENNEDY. That's the first time I was asked to do so, Mr. Chertoff.

Mr. CHERTOFF. I'm trying to reconcile this leisurely imparting to the private attorneys with the frenetic activity in the White House in September and October trying to get information from Treasury and trying to get other information. Can you shed some light on that?

Mr. KENNEDY. Mr. Chertoff, as I previously testified in deposition to this Committee, not in open session because this is the first time I've testified, Mr. Nussbaum and I agreed that after Mr. Foster's death, I would have nothing to do, to the extent possible, with subsequent investigations, subsequent interactions involving Mr. Foster, and that's what happened and so I did not know contemporaneously that documents were being moved on or any of that.

Mr. CHERTOFF. Why didn't Mr. Nussbaum tell you, then, after Coleman had called you to have Mr. Kendall return the call?

Mr. KENNEDY. Mr. Chertoff, you're trying to impose a time line which I am not sure is accurate. You may know better than I. I am not sure Mr. Kendall was on the scene in August. I just don't know.

Mr. CHERTOFF. Why didn't he have Williams & Connolly, someone at the firm return the call?

Mr. KENNEDY. You're asking me a question I don't have the knowledge to answer, Mr. Chertoff.

Mr. CHERTOFF. Just a couple minutes more. On September 29th, Mr. Hubbell got a call from April Breslaw concerning the fact that there was going to be an inquiry into the issue of whether there was a conflict when the RTC hired the Rose Law Firm to pursue a case against Frost. When did you first learn about that?

Mr. KENNEDY. I couldn't tell you, but it was from press reports.

Mr. CHERTOFF. No one called you about it?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. Even though you had been one of the people, for example, who had worked on the Madison matter?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. Mr. Hubbell never spoke to you about it?

Mr. KENNEDY. No, sir.

Mr. CHERTOFF. After the press reports came out, did you contact Mr. Hubbell and say, in substance, Web, what do you know about this?

Mr. KENNEDY. No, sir, I did not.

Mr. CHERTOFF. Finally, let me ask you this, Mr. Kennedy. You were asked by Senator Hatch whether you've ever waived the privilege with respect to this November 5th meeting. I would like to ask the question in a little different way.

Other than the people who were physically present at the November 5th meeting, have you ever orally or in writing communicated to any other person anything that happened during the course of that meeting?

Mr. KENNEDY. To my counsel, Mr. Chertoff.

Mr. CHERTOFF. You mean your personal counsel?

Mr. KENNEDY. That's correct.

Mr. CHERTOFF. Other than your personal counsel, have you ever told anybody, either orally or in writing, anything that was said

during the course of that November 5th meeting in Mr. Kendall's office?

Mr. KENNEDY. Not that I recall, Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Senator GRAMS. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I was going to inquire as to how we're going to proceed. As I understand it, Mr. Moscato, who was going to be on the third panel, has had a death in his family and is not coming as a witness. Mr. Banks has been brought up here two or three times, I think, and has never been heard from. He flies back and then has to come back again which is a great imposition. I would like to suggest to the Chairman that we consolidate those two panels.

The CHAIRMAN. Sure.

Senator SARBANES. We can either bring them on now or take a short break and begin at a very early time in order to finish up.

I think we're finished with this witness, are we not?

The CHAIRMAN. I believe that we have concluded as of this point. I would suggest that we reconvene at 2:05 p.m. I would also suggest that during that period of time, our Counsels meet with Ms. Sherburne and see if they can, even by telephone, contact Mr. Kendall to resolve as much as possible the question of privilege.

In addition, I would suggest that Counsel use that additional time—because I know we are going to break into a conference, the Republicans will and I believe the Democrats will as well—to ascertain whether the witnesses will make themselves voluntarily available without the formal issuance of subpoenas tomorrow. So, this way, a great deal of work can be undertaken while we have this adjournment, and we'll come back at 2:05 p.m.

Senator SARBANES. Should we bring them on and get any opening statements they may have out of the way? I think we might be able to do that.

The CHAIRMAN. We are going to start at 2:05 p.m. We will bring them in and anyone who wants to make a statement will make a statement. We will combine the two panels, and we'll get through with them. I do not believe that we have much in the way of time on this side. You might want to take more time with the witnesses on your side. We ought to conclude it at or about 5 p.m. if we start at 2:05 p.m. So we'll stand in recess.

[Whereupon, at 12:25 p.m., the hearing was recessed, to be reconvened at 2:05 p.m. this same day.]

AFTERNOON SESSION

The CHAIRMAN. I thank the witnesses for appearing, and I thank you for standing for purposes of taking the oath. Would you raise your right hand and repeat after me.

We'll start with Mr. Irons, and work our way across. If you want to identify yourself and if you have any statement that you would like to give, we would be pleased to take it.

Mr. Irons.

SWORN TESTIMONY OF STEVEN D. IRONS
SUPERVISORY SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Mr. IRONS. Thank you. Mr. Chairman, Senator Sarbanes, Members of the Committee, my name is Steven D. Irons. I am a Supervisory Special Agent with the Federal Bureau of Investigation, assigned to the Little Rock, Arkansas field division.

Since January 1994, I have been on detail to the Office of Independent Counsel. I am here to testify today in accordance with an agreement between the Committee and the Office of the Independent Counsel. Thank you.

The CHAIRMAN. Thank you, Mr. Irons. Mr. Pettus.

SWORN TESTIMONY OF DONALD PETTUS
FORMER SPECIAL AGENT IN CHARGE
FEDERAL BUREAU OF INVESTIGATION

Mr. PETTUS. Mr. Chairman, Senator Sarbanes, Members of the Committee, my name is Don Pettus. I retired from the FBI in November 1994. From January 1986 to December 1992, I was the Special Agent in Charge of the FBI field office in Little Rock. I'm happy to answer any of your questions.

The CHAIRMAN. Thank you, Mr. Pettus. Mr. Kendrick.

SWORN TESTIMONY OF KEVIN KENDRICK
SUPERVISORY SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Mr. KENDRICK. Mr. Chairman, Senator Sarbanes, Members of the Committee, my name is Kevin Kendrick. I'm a Supervisory Special Agent assigned to the Detroit field office. I was assigned to our headquarters office, the FBI's headquarters office, from September 1992 until December 1994. I'm happy to answer any questions you might have.

The CHAIRMAN. Thank you, Mr. Kendrick. Mr. Banks.

SWORN TESTIMONY OF CHARLES A. BANKS
FORMER U.S. ATTORNEY, EASTERN DISTRICT, ARKANSAS

Mr. BANKS. Good afternoon, Mr. Chairman and distinguished Members of this Committee. I appreciate the opportunity to be here this afternoon and would like to, if I might, make just a brief series of introductory remarks.

My name is Charles A. Banks. I'm a practicing attorney in Little Rock, Arkansas with the firm Banks, Dodson & Spades. My primary focus is in litigation with special emphasis on civil, commercial and criminal trials.

I, of course, served as U.S. Attorney with great privilege and honor to have done so in the Eastern District of Arkansas, from on or about November 6, 1987 through and until March 1, 1993.

I married my wife, who is Nancy Banks. We have three children and we're lifelong residents of Arkansas. I'm a 1969 graduate of the University of Arkansas School of Business; and I received a Juris Doctorate from the University of Arkansas School of Law in 1972. I was admitted to practice before the Arkansas Bar in April 1973.

I am currently licensed to practice before the U.S. Supreme Court, the 8th Circuit Court of Appeals, U.S. District Courts, Eastern and Western Districts of Arkansas, and the Arkansas Supreme Court and Appellate Courts. I currently practice in all State, circuit and chancery courts.

I was pleased to have been a former member of the Arkansas Trial Lawyers Association and I served as the president of that organization. I'm certified as a Civil Trial Specialist by the National Board of Trial Advocacy.

In 1982 I was privileged to be the Republican nominee for the U.S. Congress, First Congressional District of Arkansas. I ran unsuccessfully against an incumbent Democrat and was defeated in the general election of that year. I was privileged to serve as General Counsel to the Republican party of Arkansas for the year 1983, during which time period, as a private practitioner, I brought a civil rights lawsuit against the then-Governor, Bill Clinton, of Arkansas, for the politically motivated firing of the Arkansas State Labor Commissioner, who was a Republican.

In November 1987, I had the high honor of being submitted for nomination as U.S. Attorney for the Eastern District by the Honorable John Paul Hammerschmidt, then a Member of Congress. I was nominated for U.S. Attorney for the Eastern District of Arkansas by President Ronald Reagan in February 1988, and confirmed, as I said earlier, by the Senate in that month and year.

In August 1992, I received the extraordinary honor of being named by President George Bush as a nominee for U.S. District Judge in the Eastern District of Arkansas. That nomination was submitted to the U.S. Senate for confirmation, and that nomination expired without action by the Senate after the national elections of November 1992.

As U.S. Attorney, I personally participated in numerous trials including the prosecution of a failed savings and loan identified as First South. At that time, it was the largest financial institutional collapse in our State, and convictions in that case included, among others, the chief executive officer, the president and the former president of the Arkansas Bar Association. During my term as U.S. Attorney, our office was successful in prosecuting eight savings and loan institutional frauds and successfully convicted 21 of 24 officers, directors or attorneys as insiders.

The one unsuccessful prosecution in our office was the very first savings and loan case tried in 1989 or 1990, and it was identified as Madison Guaranty Savings & Loan. The target of the prosecution was Jim McDougal and the trial resulted in a defendant's verdict of Mr. McDougal and two co-defendants.

In September 1992, our office received criminal referral number C0004 regarding Madison Guaranty Savings & Loan. The targets

of the referral were Mr. and Mrs. McDougal and Lisa Anspaugh, an employee bookkeeper. C0004 included as potential witnesses Governor Bill Clinton, Hillary Rodham Clinton, Lieutenant Governor Jim Guy Tucker and former U.S. Senator J. William Fulbright.

Referral number C0004, with an explanatory cover letter, was sent to the Department of Justice on October 6, 1992. The referral and supporting documents were analyzed by myself, F. Mac Dodson, first assistant, and by special agents of the FBI. This was done on at least two occasions and possibly three.

From the analysis we concluded the following: Criminal allegations against Mr. and Mrs. McDougal and Ms. Anspaugh were meritorious, but the case was subject to declination due to a previous prosecution, resource commitments to other S&L investigations, little if any prospect of recovery from the institution and the present mental health of Mr. McDougal. However, these allegations would be subject to further discussion for limited investigation.

The allegations against potential witnesses, Mr. and Mrs. Clinton and Mr. Tucker, did not present a prosecutable case capable of being proved beyond a reasonable doubt.

Third, no Grand Jury investigation or issuance of Grand Jury subpoenas pursuant to C0004 against any of the above individuals should or would be initiated prior to the November 1992 Presidential elections.

This analysis and the basis for this conclusion was reduced to writing by letters dated October 6, 1992, October 16, 1992, and January 27, 1993; all of which were sent to the Department of Justice. After the elections of 1992, there being no further contact from the Department, FBI, RTC or other agencies, there was no further investigation initiated by my office, as indicated in my letter of January 27th.

All decisions that I made, Mr. Chairman and Members of this distinguished body, were made, in reference to C0004, honestly and sincerely, with careful thought and with high purpose in mind. I believe, as a U.S. Attorney, to have acted other than as I did, would have been improper and subjected the Department, the President, myself and the people of Arkansas to discredit and disdain. Simply put, I believe I did the right thing for the right reasons.

I appreciate this Committee giving consideration to our pressing schedules and trying to accommodate us and I appreciate you letting me take time to make these brief introductory remarks. I'm happy to answer any questions that you would have.

The CHAIRMAN. Thank you very much, Mr. Banks. Mr. Frazier.

SWORN TESTIMONY OF DOUGLAS FRAZIER
ASSISTANT DIRECTOR FOR EVALUATION AND REVIEW
EXECUTIVE OFFICE FOR U.S. ATTORNEYS
FORMER ACTING ASSOCIATE DEPUTY ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE

Mr. FRAZIER. Mr. Chairman, Senator Sarbanes, Members of the Committee, my name is Douglas Frazier and I presently serve as Assistant Director for the Evaluation and Review staff, Executive Office for United States Attorneys, with the Department of Justice.

I joined the Department of Justice as an Assistant U.S. Attorney after leaving active duty in the Marine Corps. From 1984 to 1990, I served as an Assistant U.S. Attorney in the Eastern District of Louisiana and in the Middle District of Florida.

In August 1990, I was detailed to the Executive Office for United States Attorneys to form the Priority Program Section. The initial mission of Priority Programs was to serve as liaison between the U.S. Attorneys' Offices and the Special Counsel for Financial Institution Fraud. Priority Programs served as the data collection unit for the Special Counsel. In January 1991, still detailed to EOUSA, I was asked to serve as Acting Deputy Director of the Executive Office for United States Attorneys, and served in that capacity until February 1992.

In February 1992, I was assigned as First Assistant U.S. Attorney in the Southern District of Florida in conjunction with the Interim U.S. Attorney there. Upon Presidential nomination of a new U.S. Attorney for the District, I was appointed Interim U.S. Attorney for the District of Nevada. I served as U.S. Attorney in Nevada from May to September 1992.

From October 1992 to June 1993, I was detailed to serve as Acting Associate Deputy Attorney General. My responsibilities varied, but during the Bush Administration, included law enforcement agencies, U.S. Attorneys and the Executive Office for United States Attorneys.

In January 1993, Deputy Attorney General George Terwilliger asked that I remain in the Deputy Attorney General's Office for purposes of assisting in the transition of Administrations. I agreed and remained in the Deputy Attorney General's Office for transition until June 1993, when I was appointed Interim U.S. Attorney for the Middle District of Florida. During the period of time between the inauguration and appointment of Mr. Philip Heymann as Deputy Attorney General, I acted in a limited capacity providing assistance to the new Administration. I was also involved in providing orientation training to the newly appointed U.S. Attorneys. I assumed my present position in June 1994.

I'm pleased to be here and willing to answer any questions from the Committee.

The CHAIRMAN. Thank you very much, Mr. Frazier.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Frazier, you've held a lot of jobs.

Mr. FRAZIER. I can't keep one.

The CHAIRMAN. Did you ever get that U.S. Attorney spot?

Mr. FRAZIER. No, Senator, I served as an Interim U.S. Attorney on two different occasions.

Mr. CHERTOFF. Mr. Banks, I just want to focus on something in your opening statement. You indicate here that, based on that original referral, C0004, criminal allegations against Mr. and Mrs. McDougal and Ms. Anspaugh were meritorious; is that correct?

Mr. BANKS. They were meritorious from the aspect that I saw in the substance of the allegations, there was a case there that was prosecutable. In my judgment, the priority for the prosecution really only took on urgency because of the witnesses involved. Had that case come in solely as just Mr. and Mrs. McDougal, I would

have really worked hard or given serious consideration to a declination or at least putting that case at the bottom of the list.

Mr. CHERTOFF. Let me just establish two points. One point is that as of the time that a referral comes in, there has not been any Grand Jury work; correct?

Mr. BANKS. That's correct.

Mr. CHERTOFF. And your understanding is when a referral comes in from the RTC, they have not had the opportunity to compel testimony from witnesses under oath; is that correct?

Mr. BANKS. That would be the normal process.

Mr. CHERTOFF. So a referral is really something that begins the process of a U.S. Attorney's Office investigation; it's not something that comes at the end of the investigative process; is that correct?

Mr. BANKS. That's correct.

Mr. CHERTOFF. Now, let me put the Clintons to one side. This original criminal referral also mentioned Jim Guy Tucker; correct?

Mr. BANKS. That's correct.

Mr. CHERTOFF. It talked about a particular partnership in which Mr. McDougal, Mr. Tucker and Mr. Stephen Smith had gotten some money from Madison Guaranty?

Mr. BANKS. I'm not sure I recall whether or not they had gotten money, but my recollection of the referral and the contents of the referral after this period of time is that Mr. Tucker was included in the witness list under the same type of factual scenario in some respects as the rest of the witnesses.

Mr. CHERTOFF. Part of that referral involved a group or a partnership called Tucker-McDougal-Smith; do you remember that?

Mr. BANKS. I do remember that.

Mr. CHERTOFF. Who is Stephen Smith?

Mr. BANKS. He is the former Administrative Assistant to Governor Clinton, and I am not sure what he's done in the past few years. I don't have a personal relationship or——

Mr. CHERTOFF. Was there a point in time in which he was the president of his own bank?

Mr. BANKS. Yes, I believe that's correct. Kingston or something.

Mr. CHERTOFF. Do you know at that time whether the bank of Kingston had been involved in making a loan to the Clintons?

Mr. BANKS. I don't recall that.

Mr. CHERTOFF. Now, let's put the Clintons to one side and focus on the issue of priorities. When you got this referral, wholly apart from the Clintons, there was an indication on the face of the referral that Mr. Tucker who was, I gather, a very senior political figure in Arkansas was involved in some kind of, shall we say questionable business transactions with Mr. McDougal and Mr. Smith in connection with this Madison Guaranty Bank; correct?

Mr. BANKS. As I said, yes, he was considered a witness to the referral and the allegations in the referral indicated the same or similar scenario of alleged behavior as the other witnesses.

Mr. CHERTOFF. Did you personally prosecute the original case against McDougal?

Mr. BANKS. No, I did not.

Mr. CHERTOFF. Did you sign the indictment?

Mr. BANKS. Oh, I'm sure I did.

Mr. CHERTOFF. I take it, notwithstanding the acquittal, you believed that case was a meritorious case when you sought an indictment; correct?

Mr. BANKS. Absolutely. Otherwise, I would have never signed the indictment.

Mr. CHERTOFF. So, regardless of the acumen of the case, I take it you had some familiarity when you saw the name McDougal coming up again together with Tucker and Smith, you had a background as to who Mr. McDougal was?

Mr. BANKS. Sure, I had a background of who he was. If I may explain, though. That first case—that was the first, the McDougal case, as I'll refer to it—in 1989 was the very first S&L case prosecuted by our office. Because of political allegations and innuendoes that were raised at the outset of the investigation and prior to trial, I did not personally participate in a hands-on manner as I did in the other S&L cases. That's not to be so presumptuous as to say that's why we lost it. I don't mean to imply that.

I accept full responsibility for the prosecution of that case and the fact that it resulted in a defendant's verdict. I do not have and did not have the working inner knowledge as a lead counsel or as a participating counsel as I would have in some other cases, but I'm not trying to run away from your question.

I knew who Mr. McDougal was from the first prosecution. I also knew, at the time this referral came in, the facts and circumstances surrounding the general scenario of what an additional prosecution would have entailed to reindict Mr. McDougal.

Mr. CHERTOFF. Let me take that in two parts. First of all, are you telling us at the time of the original McDougal case, you made a decision to keep yourself at a distance from the case?

Mr. BANKS. I made a decision to keep myself at a distance so as not to have a heavy presence that would aggravate or potentially embarrass the Department of Justice, even with unfounded political accusations or innuendo.

Mr. McDougal, in the first case, I don't even remember now what he had said both before the trial and then after the acquittal, but suffice it to say, it was less than pleasant and it also involved Congressman Hammerschmidt, that this was all a political prosecution, the only reason he was being indicted was because the Republicans wanted to persecute him. I thought because of the fact that I had more than a modest media exposure as a Republican and, of course, as a U.S. Attorney, it would only aggravate and distract from the substance of the trial for me to be heavily present and involved in leading the investigation.

Mr. CHERTOFF. So you had a previous experience or had made a previous decision that, even back at the time of the first case, McDougal was a very politically sensitive case for you to get involved? That sums it up basically?

Mr. BANKS. That sums it up except for this: When you say for me to get involved, it was not just me, my involvement was the involvement of the Department of Justice. I didn't think the Department of Justice would want that political embarrassment either.

Mr. CHERTOFF. You're saying the political embarrassment came from Mr. McDougal making accusations against you?

Mr. BANKS. Not only that, we lost the case.

Mr. CHERTOFF. When you made your decision to step back from the original prosecution, you thought it was going to be a good case; right?

Mr. BANKS. Yes. If I had to try over again, that case would have been moved back in time and it would have been worked further. I think that, frankly, we cut the case too narrow, but as I told the defense counsel, you win them and you lose them. We did what we thought was right and proper under oath and we lost. The jury acquitted him.

Mr. CHERTOFF. So when you get the second case coming in, you are looking at that case against the background of your previous sensitivity about the case, and also your previous understanding that maybe there was some more work that could have been done with Mr. McDougal; right?

Mr. BANKS. Not only that, but, quite frankly, the second case that came in, again, based upon my recollection, the allegations of the second case, even though they did not rise to the level of immediate urgent need to try to get this Grand Jury going, I thought were stronger than the first case.

But the situation had changed dramatically in 3 years, as to Mr. McDougal, as to the number of S&L investigations we were faced with, and as to the number of convictions that we had incurred.

Again, in all honesty, Mr. Chertoff, this referral, the way it came in, the pressure that came with it, the so-called sense of urgency that seemed to be attributed to it made me back away from it and give it a very, I thought, reasonable, prudent and cautious look.

Mr. CHERTOFF. As of November 9, 1992, the day after election day, that referral was still there; right?

Mr. BANKS. Yes, sir.

Mr. CHERTOFF. At that point, you have a referral involving what you've acknowledged is someone who in some ways is more serious criminally than the first case you prosecuted, where the soon-to-be Sitting Governor of Arkansas is one of the people named as having been involved in a transaction with Mr. McDougal who you have some previous opinions of in terms of his being involved in some funny stuff with S&L's; is that right?

Mr. BANKS. That's correct.

Mr. CHERTOFF. Now, would you agree with me that, putting aside the question of how much money can be recovered, any time you have a case in which there is a suggestion of illegality touching upon the Governor of a State, that automatically becomes a high priority case?

Mr. BANKS. I would agree with that to this extent: I certainly think that it causes you to prioritize it in a different manner, and I think it also causes you to attempt to make a preliminary examination of the allegations to be sure that there is a substance and a need for some type of emergency or urgent reaction to it.

I mean, in my case, you said separate, you said separate the witnesses from the main indictment and I am.

Mr. CHERTOFF. I said separate the Clintons from the main indictment.

Mr. BANKS. I'm sorry, but I have to put Mr. Tucker in the same category. I didn't see any special focus on Governor Tucker or special misconduct. Just so you'll know, whenever meetings were held

and discussions were held about this referral, when the sense of urgency came up, it was not involving Senator Fulbright, Stephen Smith, Greg Young, or Governor Tucker, it was always, either tacitly or expressly implied, that the sense of priority or hot potato, if you will, was Mr. and Mrs. Clinton.

Mr. CHERTOFF. But on November 9th, the day after the election, whatever reason you have for delaying, now it's November 9th. The election is over, Mr. Clinton is the President. Mr. Tucker is going to be the Governor. At that point, there is no longer an issue of interfering with an election or something coming up at the last minute.

At that point, did you give the word, did you say let's get going on this investigation involving the Sitting Governor of the State of Arkansas?

Mr. BANKS. No. Can I tell you why not?

Mr. CHERTOFF. Sure.

Mr. BANKS. Number one, the allegations in the referral, as I saw them—and please remember I only had one referral that came in, C0004. In that referral, it was my considered judgment, as well as the judgment of others—and my impression at that point in time was it included the FBI, it included my First Assistant, it included a respected member of the staff, Mr. Jackson—that the allegations were not prosecutable.

I mean, it did not seem to me, if I had already sent this information in to the Department of Justice as early as October 6th, that the Department of Justice, main Justice, knew well in hand what I had down there on that referral, and I assume that the Department concurred with me that the way to handle it was cautiously and prudently and not to inject a Grand Jury issuance of subpoenas to create media attention to matters that we didn't even think we could prove.

Mr. CHERTOFF. Let me break this into two parts. After the election on November 9th, you don't worry anymore about affecting the November election; correct? So that is out of it as an issue; right?

Mr. BANKS. That's out of it as an issue.

Mr. CHERTOFF. Now, you can't know whether—and you told us a moment ago and you have it in your statement—the allegations were meritorious, that in some ways they were more serious than in the first case you brought. The referral itself indicates that there is some kind of a business relationship or a partnership between McDougal and Tucker. Tucker is the Sitting Governor which automatically makes it a high priority case.

As of November 9th, after the election, how are you going to determine if you have a prosecutable case if you don't start a criminal investigation?

Mr. BANKS. I guess I would answer the question this way: There are those, I'm sure, that can disagree with how I handled that referral, but I think that I handled it in the appropriate way. For example, after the election, there was no more Republican Administration except for the phase-out. The Department of Justice, main Justice, knew about the contents of the referral and they knew my vigorous feelings about the referral itself.

At all times that I was acting as U.S. Attorney, I was also a pending nominee for a Federal judgeship. Now, if before the elec-

tion had I pursued the referral, it certainly would have appeared and, in my mind, smacked of pure self-serving partisan conduct so that I could hopefully ensure that I would become a Federal judge to help the election of President Bush.

After the election, it seems to me that to have begun a referral knowing that it was going to get media attention, whether it be against Governor Tucker, whether it be against the Clintons, and you are not going to get media attention just against Governor Tucker, then you certainly are going to incur a perception that you're trying to punish the next President of the United States because you're not going to be a Federal judge.

Also, I can't imagine that a Sitting U.S. Attorney who is on his way out would initiate such an investigation and incur that type of embarrassment to the Department of Justice, himself, and to the FBI.

Finally, if main Justice is not making any inquiry about it, and no one else is making any inquiry about it, I thought I was handling it in a way consistent with the way they thought it should be handled.

Mr. CHERTOFF. Mr. Irons, let me ask you something. We have an agreement with the Independent Counsel to limit the timeframe in which we examine you, but I want to focus your attention on the period of September 1993. I want to put before you a memorandum that's written by you to the SAC/Little Rock, dated 10/1/93. Let's put it up on the Elmo. It relates to David Hale.

Now, am I correct that as of——

Mr. BANKS. What, now? I'm sorry.

Mr. CHERTOFF. It relates to September 28, 1993, but it's actually dated October 1, 1993. It's to the SAC for Little Rock from Steven Irons. Did you write that memorandum?

Mr. IRONS. Is the subject of this memorandum Thomas W. Anderson, et al.?

Mr. CHERTOFF. Yes.

Mr. IRONS. Yes, I did.

Mr. CHERTOFF. At this time you had an open case against David Hale; in fact, he had already been indicted; is that correct?

Mr. IRONS. That's correct. Mr. Chertoff, I have two memos dated October 1, 1993. I'm confused as to which one——

Mr. CHERTOFF. It is two paragraphs and it starts "on 9/28/93 writer had a telephonic conversation."

Mr. IRONS. I have that. I'm sorry.

Mr. CHERTOFF. You had a conversation with Cecelia Seay on September 28th, an attorney for the Small Business Administration, regarding David Hale; is that correct?

Mr. IRONS. That's correct.

Mr. CHERTOFF. She was a contract lawyer working for the SBA in terms of their receivership for Capital Management, Mr. Hale's old company; is that correct?

Mr. IRONS. That's correct.

Mr. CHERTOFF. Now, I want you to read the second paragraph to us, if you would.

Mr. IRONS. It says:

Writer mentioned the media reports of SBA spokesman Teckler's comments concerning the case and noted Teckler was not helping matters by stating certain

activities were not criminal in nature when he did not have all of the facts. Seay advised she had spoken to SBA in Washington (possibly Mark Stephens), and understood officials from the White House had urged SBA to make such a characterization due to the mentions of Whitewater Development in some news accounts and White House desire to avoid any inference criminal activity could have occurred in relation to Whitewater Development and Hale's company.

Mr. CHERTOFF. Mr. Irons, can you tell us the facts surrounding this report that you made?

Mr. IRONS. As I recall, during that time period myself and other agents assigned to this investigation were having conversations with not only Ms. Seay but other representatives of the SBA. As background, the FBI had executed a search warrant on Mr. Hale's company in July 1993, did not obtain all of the records, and were interested in obtaining further records of the company.

Ms. Seay, in the capacity of attorney for the SBA and as part of her efforts in the receivership, obtained the balance of those records, or at least additional records. So there were ongoing conversations between FBI representatives and Ms. Seay concerning the total universe of records and a sharing of information.

Mr. CHERTOFF. Now, in the context of this, what was the discussion that you had in which Ms. Seay indicated to you that the White House had urged the SBA to make certain characterizations about this case?

Mr. IRONS. The context is I was complaining to her, since I thought she might have some contact with the SBA officials, that the SBA spokesman would presume to characterize whether there was anything to an investigation, that at that time was ongoing, and the ultimate facts had not been determined.

Mr. CHERTOFF. She came back to you and what did she say to you?

Mr. IRONS. I would refer to the memo. It is my understanding she said that she understood from her conversations with SBA officials in Washington—and I didn't know who that was, but at that time Mark Stephens was an attorney we were dealing with and Mark Stephens was out of Washington. I wasn't sure she referred to Mark. She may have referred to Mark in the conversation, so that's why I put "possibly Mark Stephens" in parentheses.

It is my understanding that what she was telling me was that the SBA had received from the White House some indication that they wanted the SBA to characterize the activity as my memo states.

Mr. CHERTOFF. Now, you made a point of writing this in the memorandum to your supervisor; is that correct?

Mr. IRONS. Yes, actually it's to memorialize this to the file for whoever might have an interest in that.

Mr. CHERTOFF. You did that because you felt it was an important conversation?

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. Had you had a previous experience in which you had received some information that an attorney for Mr. Hale, not Mr. Coleman, an attorney by the name of Mr. Mays may have gone to Washington to try to do something about the case against Mr. Hale?

Mr. IRONS. I did receive such information. I was not clear that Mr. Mays was acting as an attorney for Mr. Hale.

Mr. CHERTOFF. Was it information about Mr. Mays?

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. Who is Mr. Mays?

Mr. IRONS. Mr. Mays is an attorney in Little Rock. I believe he held a judgeship of some kind in the State, or at a local level.

Mr. CHERTOFF. Would you describe Mr. Mays as a well connected attorney?

Mr. IRONS. I would now.

Mr. CHERTOFF. You weren't sure whether Mr. Mays actually was representing Mr. Hale at any point in time?

Mr. IRONS. I'm not sure.

Mr. CHERTOFF. But did you learn from Mr. Jackson at the U.S. Attorney's Office that there was some understanding that Mr. Mays had gone to Washington to meet with unknown officials to try to get the investigation into Hale quashed?

Mr. IRONS. Yes.

Mr. CHERTOFF. Tell us as best you can recall what Mr. Jackson told you about that.

Mr. IRONS. As best as I recall, Mr. Jackson, one day when he was in the FBI office base and we were discussing this investigation, told me that he understood that representatives of Mr. Hale had made the rounds of the politicians in Arkansas trying to derail this case, and having been unsuccessful or apparently unsuccessful, that Mr. Mays was scheduled to travel to Washington, he heard, to speak to somebody in Washington about helping Mr. Hale out.

Mr. CHERTOFF. Did you ever find out to whom Mr. Mays spoke?

Mr. IRONS. I never knew that for sure.

Mr. CHERTOFF. Did you ever determine whether Mr. Mays was someone who had physical access to the White House?

Mr. IRONS. At that time I don't believe I knew whether he did or not.

Mr. CHERTOFF. Do you know now?

Mr. IRONS. I believe under the agreement between the Independent Counsel——

Mr. CHERTOFF. Is that off limits? OK. I'll honor that.

Let me ask you this, then. Again, limiting yourself to the stuff you knew before the Special Counsel was appointed, did you know that Mr. Mays was someone who had telephone contact, for example, with Mr. Hubbell when Mr. Hubbell was Associate Attorney General?

Mr. IRONS. No, and if I could clarify, I don't recall hearing of Mr. Mays until Mr. Jackson first mentioned him.

Mr. CHERTOFF. Now, I want to take you again back to this September memo involving the White House contact with the SBA. Is one of the reasons you wrote that memo because you had a concern—and, again, I'm limiting you to that period of time—that there was some potential for interference in this investigation from the White House?

Mr. IRONS. I wanted to be careful to watch for that.

Mr. CHERTOFF. I want to take you a little bit further, actually into the same period, September 24th. Again, there is another memo of October 1, which you had directed my attention to, which relates to a meeting that you had in Paula Casey's office, also re-

garding the same case, the David Hale case. Is that memo the one that we've got up on the Elmo there?

Mr. IRONS. Yes, sir, it is.

Mr. CHERTOFF. Now, in the course of this, what was the purpose of this meeting?

Mr. IRONS. The purpose of this meeting or this memo?

Mr. CHERTOFF. The purpose of the meeting.

Mr. IRONS. The meeting. It was my understanding that this meeting was going to accomplish two purposes. I said in the memo it was to have an ongoing coordination of the investigative efforts that were ongoing between the FBI and the U.S. Attorney's Office.

From a FBI standpoint, a major component of that was to offer input concerning how the investigation could be conducted with more coordination between the FBI and the U.S. Attorney's Office. Also, from conversations I believe I had with Assistant U.S. Attorney Michael Johnson, maybe a day or so before this meeting, I was aware that the potential issue of Paula Casey's recusal could be discussed.

So I would say from the U.S. Attorney's Office point of view, that may have been a major reason for the meeting; and from the FBI's point of view, certainly we wanted to hear about any recusal, but it was to discuss coordination.

Mr. CHERTOFF. What did Mr. Johnson tell you was the reason Ms. Casey might be considering recusal?

Mr. IRONS. I'm not sure exactly what he said in that conversation. I don't know if, at that point, he mentioned that there had been some communications or rumors from the Department of Justice that maybe they thought it was necessary, or if that came later, I just don't know.

Mr. CHERTOFF. During the course of the meeting, did the subject of Ms. Casey's recusal come up?

Mr. IRONS. Yes, it did.

Mr. CHERTOFF. Would you tell us what was said about it?

Mr. IRONS. After hearing a discussion of previous investigative findings and the contemplated investigative activity, Ms. Casey advised that she felt like it was a certainty that she would recuse herself, and that the only remaining decision was to determine the timing of the recusal.

Mr. CHERTOFF. Did she explain why she would recuse herself as of September 24th?

Mr. IRONS. Yes.

Mr. CHERTOFF. What did she say?

Mr. IRONS. The reason, as I recall, and as I've documented in the memo, was her friendship with Jim Guy Tucker, Seth Ward, and Stephen Smith.

Mr. CHERTOFF. Now, we've already obtained a description from this panel as to who Governor Tucker was and who Stephen Smith was. Who did you understand Seth Ward was for purposes of this investigation, what was his relevance?

Mr. IRONS. Seth Ward, I believe, had been a major borrower at Madison Guaranty Savings & Loan and he was the father-in-law of Webb Hubbell.

Mr. CHERTOFF. Did you express an opinion in the meeting about whether Ms. Casey should recuse herself?

Mr. IRONS. No, I did not express an opinion about whether she should recuse herself. I limited myself to an estimation of the degree of involvement of these people.

Mr. CHERTOFF. What did you say was the degree of likely involvement of Tucker, Ward and Smith——

Mr. IRONS. That——

Mr. CHERTOFF. —in relation to her recusal?

Mr. IRONS. It was my estimation that if they weren't ultimately charged, they would be witnesses, possibly immunized witnesses.

Mr. CHERTOFF. When you say "immunized witnesses," you mean people who would testify but under immunity from prosecution?

Mr. IRONS. Yeah, I think the distinction I was trying to draw was while they may not be charged, they were close to the activities that appeared to have gone on and——

Mr. CHERTOFF. At some point did Ms. Casey leave the room during the balance of the meeting?

Mr. IRONS. Yes, she did. After a characterization by the FBI and by Fletcher Jackson of the U.S. Attorney's Office as to what the previous investigative findings had disclosed and what contemplated investigation remained, and after a short discussion about suggestions as to better coordinate the investigation, there was to be an investigation of specifics and mechanics of how to proceed with the investigation that was contemplated.

Having already said that she did not want to hear details of that because she was operating under the condition of recusal, at least within the office, she did not want to hear the discussion as to what investigative steps would be taken, so she left the meeting at that point. Myself and the Assistant Special Agent in Charge, Don Whitehead, also left. The only people remaining were the people that had an actual hands-on investigative role.

Mr. CHERTOFF. You mentioned Assistant U.S. Attorney Jackson. Was Assistant U.S. Attorney Jackson's estimation of the likely involvement of Tucker, Ward and Smith in the case similar to your own estimation?

Mr. IRONS. I believe it was substantially the same.

Mr. CHERTOFF. Now, were you surprised that it took Ms. Casey over a month to actually enter a written recusal from the time that she said she would at this meeting until the time that the recusal was entered in early November?

Mr. IRONS. I can't remember if I was surprised or not.

Mr. CHERTOFF. Did you ever come to learn that the Director of the FBI had expressed an opinion as to whether she should recuse herself?

Mr. IRONS. I'm not sure. I think I testified in my deposition that I did not know that, and somebody may have told me that later. I'm just not sure.

Mr. CHERTOFF. Did you ever get an explanation from Ms. Casey as to the reason she delayed from September 24th until approximately November 4th or 5th?

Mr. IRONS. Yes, I believe I received an explanation. The newspapers, I believe, had either printed a copy of a letter from Randy Coleman or in some way had printed something to the effect that David Hale and/or Randy Coleman was questioning the objectivity of Paula Casey. I know she mentioned that she did not want to

give credence to what she considered to be spurious allegations by appearing to cave in to this media attack.

Mr. CHERTOFF. That was the reason she gave or that was the reason you were given to understand was the cause for her delay between the time she said it was a certainty she would have to recuse on September 24th and the time she actually did on or around November 4th?

Mr. IRONS. That was the explanation I heard as to her only having to decide the best time for recusal. That was from a standpoint of maintaining, for the Office of the U.S. Attorney in the Eastern District, a public perception other than yes, the defense in the Hale cases made this allegation, and I obviously agreed because I immediately recused.

That's the only explanation I received. I don't know what else might have happened between this date and the date she recused.

Mr. CHERTOFF. Mr. Chairman, I believe Mr. Giuffra has a few questions.

The CHAIRMAN. I notice that the yellow light is on so rather than get into that, why don't we go to Senator Sarbanes and——

Senator SARBANES. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Mr. Irons, you were in charge of the Financial Institution Fraud crime section in the Little Rock FBI office in December 1991, weren't you?

Mr. IRONS. That's correct.

Mr. BEN-VENISTE. You had some considerable experience in the investigation and prosecution of financial institution fraud prior to that time?

Mr. IRONS. Yes, sir.

Mr. BEN-VENISTE. At that time, there was established, was there not, a priority for what institutions would be targeted with the resources available between the FBI and the RTC Criminal Investigation section; is that correct?

Mr. IRONS. That's correct.

Mr. BEN-VENISTE. A memo has been produced that set out, as of December 11th, from Jean Lewis, who was then known as Jean Brennan, the priorities which had Madison third from last. I think Madison was 13th on the list?

Mr. IRONS. Yes, sir, it's third from last on this list.

Mr. BEN-VENISTE. The first priority was First Federal of Paragould, then came Savers Savings, and then First Federal of Little Rock was fourth; correct?

Mr. IRONS. Actually, the list I have has First Federal of Paragould, Savers, Capital, and then First Federal of Little Rock.

Mr. BEN-VENISTE. Right, fourth.

Mr. IRONS. Yes, sir.

Mr. BEN-VENISTE. There came a time, did there not, when it was anticipated that in the first quarter of 1992, Ms. Lewis would direct her attention to Savers Savings and First Federal?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. That changed, did it not?

Mr. IRONS. Yes, it did.

Mr. BEN-VENISTE. She advised you that she had been redirected over to Madison?

Mr. IRONS. That's correct.

Mr. BEN-VENISTE. Now, there came a time when she advised you, in or about August 1992, that she was going to be submitting a criminal referral on Madison; correct?

Mr. IRONS. That's correct.

Mr. BEN-VENISTE. Do you recall writing down what she told you about her assignment with respect to the Madison referral? I refer you to OIC 1124.

Mr. IRONS. Yes, these are my notes.

Mr. BEN-VENISTE. If we could put that up. By this time she was known as Jean Lewis; correct?

Mr. IRONS. I lost track of what her name was over this period.

Mr. BEN-VENISTE. You have the initials JL on the side?

Mr. IRONS. Yes, sir, that refers to Jean Lewis.

Mr. BEN-VENISTE. Would you read your notes from the point where it says "JL called"?

Mr. IRONS. It says:

JL called. Just about ready. She has a deadline of 8/31. Gave up a job opportunity in DC just to do referral. She or it could alter history. Very dramatic.

Mr. BEN-VENISTE. Now, when you wrote "very dramatic," what did you mean by that?

Mr. IRONS. She was talking about this referral that was coming in very serious tones, and I had not received a lot of details from her as to what would be in the referral. I was probably trying to engage her in conversation that would allow me to assess how serious the allegations in the referral might be, and by "dramatic," I believe I was trying to note that she communicated to me they were very serious.

Mr. BEN-VENISTE. Regarding her reference to "alter history," you understood that the target of that criminal referral was to be Jim McDougal; correct?

Mr. IRONS. Yes, Jim McDougal was going to be the main person, I believe, in the referral.

Mr. BEN-VENISTE. OK. There wasn't any way, was there, that another criminal prosecution against Jim McDougal was going to alter the course of history?

Mr. IRONS. None came to mind.

Mr. BEN-VENISTE. So it's quite clear, is it not, that what she was referring to was the identification as witnesses of Mr. and Mrs. Clinton among others?

Mr. IRONS. I took it to mean that.

Mr. BEN-VENISTE. Now, a criminal referral then in a matter of days was presented, but did you ever get from anyone an explanation of what the sense of urgency was where she said that she had a deadline of August 31st?

Mr. IRONS. No.

Mr. BEN-VENISTE. Did Mr. Iorio ever tell you that he provided that deadline?

Mr. IRONS. Oh, I'm sorry. Yes, Jean Lewis told me, I believe, it was an internal deadline and I'm not sure that she told me how the deadline was reached, but I made an assumption at the time. I know when I receive deadlines, it's usually a superior that puts the deadline on me.

Mr. BEN-VENISTE. But no one ever confirmed to you that a superior did, in fact, set such a deadline?

Mr. IRONS. I don't remember learning that for sure.

Mr. BEN-VENISTE. OK. The actual criminal referral was received in early September, was it not?

Mr. IRONS. I believe September 2nd.

Mr. BEN-VENISTE. Ms. Lewis was questioned on the subject of whether, following the delivery of the criminal referral C0004, she contacted either the FBI or the U.S. Attorney's Office in an effort to either follow up or assure that action was going to be taken on her referral. The question from her deposition at page 49 was:

Question: Now, did there come a time in the latter part of 1992 when you contacted someone in either the FBI or the U.S. Attorney's Office in Little Rock to determine the status of criminal referral C0004?

Answer: Yes, sir.

Question: And you recall approximately what time you contacted somebody either in the FBI or the U.S. Attorney's Office in Little Rock?

Answer: I believe it was in early December 1992 that I contacted Steve Irons with the FBI in Little Rock.

Let me ask you, Mr. Irons, when was the first time that Ms. Lewis contacted you after the submission of the criminal referral?

Mr. IRONS. My recollection is that she contacted me within 4 or 5 days after September 2, 1992.

Mr. BEN-VENISTE. So the testimony to the extent it suggests that her first contact was December 1992, after the election, is not correct on the basis of your recollection?

Mr. IRONS. She's mistaken, I believe.

Mr. BEN-VENISTE. Now, you made contemporaneous notes, did you not, and incorporated those contemporaneous notes into a chronology of events which has been designated FBI Exhibit 1526? Could you turn to that? Let's put Exhibit 1527 up on the screen, the second page of that chronology.

Mr. IRONS. Yes, these were not contemporaneous notes, but I did prepare these.

Mr. BEN-VENISTE. OK. I'll point to the occasions where there are contemporaneous notes that reflect it. It says on September 2, 1992, the referral was received. Then, "next few days," where it says "RTC began to call and ask what the FBI was doing with the referral." Do you see that?

Mr. IRONS. Yes, sir.

Mr. BEN-VENISTE. When you say "RTC began to call," who actually called you?

Mr. IRONS. Jean Lewis.

Mr. BEN-VENISTE. Underneath that September 9, 1992, where it says "RTC leaves phone message complaining FBI return calls and give status report," what was that about? Who called you and what was that about?

Mr. IRONS. That's Jean Lewis leaving a telephone message. I believe the nature of it was that there had been some previous phone messages from her I had not returned as of September 9, 1992.

Mr. BEN-VENISTE. Could we put up OIC 1123, please. Is 1123 the message of September 9th? Do you see that?

Mr. IRONS. Yes, I do.

Mr. BEN-VENISTE. Can you read the phone message apparently taken by a secretary in your office from Jean Lewis?

Mr. IRONS. The message here from Jean Lewis is: "Have I turned into a local pariah just because I wrote one referral with high pro-

file names, or do you plan on calling me back before Christmas, Steven?????," and she has a telephone number.

Mr. BEN-VENISTE. Also, several question marks after "Steven."

Mr. IRONS. Yes, five.

Mr. BEN-VENISTE. Now, it reflects that she has called on more than one occasion leaving messages for you; is that correct?

Mr. IRONS. She obviously had left a message I had not returned, and it's my recollection there was more than one message.

Mr. BEN-VENISTE. Then, going back to your chronology, on the 10th of September, you spoke to Ms. Lewis; is that correct?

Mr. IRONS. Yeah, I'm trying to—I think I've lost my place on the chronology, just a minute.

Mr. BEN-VENISTE. I'm on 1527.

Mr. IRONS. You said December?

Mr. BEN-VENISTE. No, September.

Mr. IRONS. September, I'm sorry. What date?

Mr. BEN-VENISTE. September 10th.

Mr. IRONS. When I say "RTC," I mean Jean Lewis. I advised her that there was no decision by the U.S. Attorney's Office as to what action would be taken on the referral, that the FBI, meaning me, was not going to be in a position to give status reports when the U.S. Attorney did indicate what he was going to do.

This was a tactful attempt on my part to notify her that there was no need to call me anymore because I wasn't going to tell her anything.

Mr. BEN-VENISTE. Then, what happened on the 18th of September with respect to conversations with Ms. Lewis about her criminal referral?

Mr. IRONS. On the 18th of September Jean Lewis was in the FBI office, meeting with FBI personnel on an investigation unrelated to this referral, and she spoke to me after her meeting with those personnel and again asked what the status of this referral was in the U.S. Attorney's Office.

Mr. BEN-VENISTE. Did Ms. Lewis wait for you after that meeting was over to talk to you again about her criminal referral?

Mr. IRONS. Yes, the meeting was over and I had been out of my office and was returning, when one of the personnel advised me that Jean was waiting for me in the office. When I went back in my office, that's when we had this conversation regarding the status of the referral.

Mr. BEN-VENISTE. What did she say to you and what did you say to her?

Mr. IRONS. My recollection would be based on this chronology. She told me that her boss, Richard Iorio, was asking her to try to find out what we were doing. I reminded her of the sensitivity of what we were doing and that that very well could have included a reference to the upcoming general election.

Mr. BEN-VENISTE. Let me stop you there. Mr. Iorio, in his sworn testimony here, has denied asking Ms. Lewis to follow up on the criminal referral. Did you ever have any confirmation from him that he, in fact, had asked Ms. Lewis to do this followup?

Mr. IRONS. No.

Mr. BEN-VENISTE. Go ahead.

Mr. IRONS. I reminded her of the sensitivity that attached to this referral from the FBI's standpoint and told her that even if the U.S. Attorney decided to go forward, that cases such as these took longer than a month to determine whether or not there was a prosecutable case present based on the facts.

Mr. BEN-VENISTE. Why did you use a month? This is now 16 days and the fourth or fifth time she's contacted you. What was there about a month that caused you to reference that in your conversation?

Mr. IRONS. I'm not sure if she said something about a month. I believe, in my mind, a month was a general timeframe between the date this conversation occurred and the general election.

Mr. BEN-VENISTE. So you drew the connection between the upcoming general election with the thought that Ms. Lewis was trying to press you for some action or a determination prior to the election?

Mr. IRONS. As I believe I explained in the deposition, I was sensitive to the fact that it could be that the RTC expected for some action to occur before the election. What I was trying to reinforce to her was since a case like this took longer than a month to determine whether or not a prosecution would be feasible, that there was no reason to rush right now since we had an election coming up and this——

Mr. BEN-VENISTE. What did she say in response to that?

Mr. IRONS. These notes may not be in the exact order the conversation occurred, but she told me that everyone above her in the RTC was aware of the referral and it was approved at Washington before going out. She apologized to me for the repeated contacts that had occurred since I received this referral, but she said her superiors were telling her to find out what we were doing.

Mr. BEN-VENISTE. What else did you tell her?

Mr. IRONS. I told her that any communication to her or the RTC as to the status of this would have to come from the U.S. Attorney's Office, and because I had previously told her that there had to be additional meetings with the U.S. Attorney before a decision was made, that even though I had told her that, that she could not expect for me to keep her updated when those meetings occurred or what the outcome was. I suggested to her that she deal directly with the U.S. Attorney's Office on this.

Also, I made an observation that, in my opinion, neither she nor the RTC had any reason or need to know the exact timeframe of when these discussions or decisions took place, and then she offered any assistance that the FBI would need in any action it took.

Mr. BEN-VENISTE. Now, on the 6th of October, according to your notes, you received a communication from Mac Dodson who was the First Assistant U.S. Attorney in Mr. Banks' office?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. What did he tell you in regard to any contact that he may have received from Jean Lewis?

Mr. IRONS. He advised me that Jean Lewis had contacted him and told him that she was making a standard followup contact 6 weeks after the referral to determine for certain that it had been received, and to determine whether or not any clarification was

needed as to its contents or if any assistance was needed in any investigative activity that could be contemplated.

Mr. BEN-VENISTE. I will read from Mr. Dodson's deposition at page 47:

Question: Turning back to your contacts with Ms. Lewis concerning the 1992 RTC criminal referral, could you describe those contacts as you recall they occurred?
Answer: She called me quite a few times wanting to know about the case.

Also, at the top of page 48:

All the calls would have been between the 1st of September and probably November around election time. It was my recollection she called me every week or every other week. She called me fairly often. I don't really—I don't remember. I got the impression she thought I was not moving fast enough, but that's really the only thing I remember about the conversation.

Now, Mr. Banks, were you advised of the fact that Ms. Lewis had made the comment about turning down another job opportunity to have the opportunity to alter the course of history?

Mr. BANKS. No, sir, at these hearings is the first time I have heard that.

Mr. BEN-VENISTE. Did you hear from Mr. Irons and Mr. Dodson that Ms. Lewis was calling persistently to the FBI and to your office with respect to her criminal referral mere days after she had sent it in?

Mr. BANKS. Yes, sir. I don't recall any substantive conversations with Mr. Irons, I'm sure that there was at least one, but I do recall that, on at least three and more like five different occasions, Mr. Dodson would come into the office and, after telling me we have this referral and after we determined that the statute of limitations was not running and we weren't losing counts, he would say this Ms. Lewis has called again, and she's insistent that there be urgency to work this case, or words to that effect. My first response was to ignore her.

Just ignore it. We're not going to be pressured into doing something rash or imprudent with this referral. I do recall that, on at least the fourth or fifth telephone call where Mr. Dodson related that she had again called and there was a sense of urgency about how it should be worked, I said I'm not going to be pressured by Ms. Lewis or the RTC. Tell her to call me. I've never spoken with her, and never met her either.

Mr. BEN-VENISTE. Now, you determined that, in view of the totality of the circumstances relating to the target of the referral, the history of Mr. McDougal, the lack of any need for urgency in proceeding against Mr. McDougal, that you would not take any action involving this referral until after the election; is that correct?

Mr. BANKS. I would not take any action involving this referral until after the election that involved the invoking of Grand Jury power, the issuance of subpoenas that I thought would be leaked and be made public. As far as trying to study the referral, determining whether the statute of limitations was running, yes. In essence, the answer to your question is yes, I was not going to do anything with it prior to the November election.

Mr. BEN-VENISTE. Now, Mr. Pettus, did you, as Special Agent in Charge of the Little Rock office at the time, form an opinion with respect to the prosecutive merit and the use of resources with respect to the Madison criminal referral of 1992?

Mr. PETTUS. Yes, I did.

Mr. BEN-VENISTE. What was your conclusion?

Mr. PETTUS. Again, this is a special situation. We had gone through the trial. We had the extensive investigation. There had been acquittal and, as Mr. Banks had mentioned earlier, the main defendant, there was a question about his health. We have to take that into perspective with the referral coming out at this time.

Mr. BEN-VENISTE. Would it be fair to say that your collective judgment at the FBI, as well as the U.S. Attorney's Office in Little Rock, as far as you observed, was that the 1992 referral had little prosecutive merit and was not the best use of limited resources?

Mr. PETTUS. I think our main concern at that time was to be totally fair and objective and we handled this appeal in that manner, taking into consideration the time when it came in.

As to the witnesses, that was our basic assessment. There were other targets or suspects, but there was no urgency at this point and we could, in our discussions with Mr. Banks, evaluate the statutes and that type of thing, but, right.

Mr. BEN-VENISTE. Now, it is true, is it not, that Mr. Irons advised you, more or less contemporaneously, of Ms. Lewis' statement about changing the course of history with this criminal referral; is that correct?

Mr. PETTUS. I believe that's correct.

Mr. BEN-VENISTE. Did that give you a concern both in terms of the timing of when this criminal referral was delivered and Ms. Lewis' comment that the referral might be politically motivated?

Mr. PETTUS. Again, I mentioned that we were trying to be totally fair and objective, and certainly that comment would be a factor that we would consider in that assessment.

Mr. BEN-VENISTE. Indeed, at page 128 of your deposition, did you not testify that there was a concern in the Little Rock office of the FBI about Ms. Lewis' overall professionalism and her objectivity?

Mr. PETTUS. That is something that, based on those factors and the calls and all of the factors which had occurred over the previous month, the referral coming in at the time it did; and, like I say, the calls, those were factors that made us make an assessment, right.

Mr. BEN-VENISTE. Mr. Irons, in evaluating the 1992 referral, is it correct, sir, that you determined that there was no information in the referral that indicated that Mr. or Mrs. Clinton were witnesses to the check kiting?

Mr. IRONS. Yes, the referral made that assertion, and I didn't believe that there was anything in there to support that.

Mr. BEN-VENISTE. Let me ask that FBI Exhibit 1001 be put up. Mr. Banks, you wrote a letter dated October 16th to Mr. Pettus over at the FBI in which, if we turn to the second page—we've read this letter earlier in these hearings, but I want to ask you specifically about the paragraph that starts on page 2. Could you read that? Do you have it in front of you?

Mr. BANKS. I'm reading it from the monitor.

Mr. BEN-VENISTE. That might not be the easiest way to read something, it's been my experience.

Mr. BANKS. Here it is, paragraph 2?

Mr. BEN-VENISTE. The first paragraph on page 2.

Mr. BANKS. The first paragraph?

Mr. BEN-VENISTE. Then, go on to the second.

Could you read that aloud?

Mr. BANKS. I'm sorry, it says:

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming Presidential election. You and I know in investigations of this type, the first steps, such as issuance of Grand Jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to 'legitimize what can't be proven.'

Do you want me to go on?

Mr. BEN-VENISTE. Yes.

Mr. BANKS. Continuing, it says:

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

Mr. BEN-VENISTE. Had you ever written a letter like this before?

Mr. BANKS. No, sir, I sure hadn't.

Mr. BEN-VENISTE. When you said that not only would it be unfair if you had proceeded to open an investigation and go forward as Ms. Lewis was urging, that this would be not only unfair, but might rise to prosecutorial misconduct that would be detrimental not only to the witnesses, meaning the Clintons, or candidate Clinton at that point, but also the President of the United States, meaning President Bush; correct?

Mr. BANKS. Yes, sir.

Mr. BEN-VENISTE. Because there would be the possibility that those who looked at this, if there was publicity and if Mr. Clinton was tainted by some revelation relating to this investigation if it had gone overt, would think that Mr. Bush was somehow behind it or knowing?

Mr. BANKS. Yes, sir.

Mr. BEN-VENISTE. You did not want to be any part of such a thing?

Mr. BANKS. I did not intend to be. I wouldn't have been.

Mr. BEN-VENISTE. Mr. Irons, let me turn back to the issue of the limited resources available and your requests in 1992. Now, Ms. Lewis testified here that she did not recall that you made repeated efforts to get her to produce a criminal referral on Savers Savings and First Federal. What is your recollection?

Mr. IRONS. My recollection is that I did have conversations with her and other RTC personnel concerning my desire that Savers and First Federal be given a priority for examination.

Mr. BEN-VENISTE. Mr. Pettus, did you share in that view?

Mr. PETTUS. That's correct, sir.

Mr. BEN-VENISTE. What was the relative size of the loss in Savers Savings and First Federal? Do you recall?

Mr. PETTUS. I believe the loss in First Federal was roughly $900 million and the loss in Savers was about $600 million, approximately.

Mr. BEN-VENISTE. Now, Ms. Lewis testified that she had, in fact, produced a criminal referral on First Federal. Mr. Johnson testified that a referral on First Federal hadn't been received until some point in 1994, just before the statute was to run.

Mr. Irons, do you have a recollection on what the accurate chronology was?

Mr. IRONS. There are two First Federals that we had an investigative interest in. The first was First Federal located in Paragould, Arkansas, which is the northeastern part of the State.

Mr. BEN-VENISTE. When I asked Ms. Lewis specifically did she mean First Federal of Paragould, she said she did not.

Mr. IRONS. I believe there was a referral on First Federal received, but I think that's been within the last 6 months or so, and since I'm not associated with the Little Rock FBI office directly since I'm on detail, I'm only aware that the referral was received. I don't know exactly what became of it.

Mr. BEN-VENISTE. I have some more questions on this line, but they will be more substantial so I will terminate at this point, Mr. Chairman.

The CHAIRMAN. Mr. Giuffra.

Let me first say that the Ranking Member, Senator Sarbanes, and I have decided that tomorrow we will proceed with the Justice Department panel and that Thursday, we will proceed with Margaret Williams, Robert Barnett, and I.P. Barlow, so that is the manner in which we will proceed for tomorrow and for Thursday. There may be additional witnesses on Thursday's panel if we can get Ms. Blair and Ms. Thomases.

We will look at it to ascertain whether we can accommodate that without having to stay until 1 a.m., but I want to commend both Counsels for moving in a much more expeditious manner, and let's see if we can't continue that.

Mr. GIUFFRA. Thank you, Mr. Chairman.

Mr. Banks, on September 2, when your office reviewed criminal referral C0004, you reviewed the referral itself; am I correct?

Mr. BANKS. Not that soon.

Mr. GIUFFRA. When did you review the referral?

Mr. BANKS. I do not recall actually sitting down and reviewing the referrals until probably the second week. I think certainly the date—I wouldn't quarrel with the date that it came into the office, but I don't recall Mr. Dodson coming in and saying we've got this referral, this Treasury referral, and here's what it involves until, I think, 4 or 5 days later.

Mr. GIUFFRA. Had the RTC also sent over with this a number of exhibits?

Mr. BANKS. Yes, they had. I was not aware that we had the supporting documents until a week or two later.

Mr. GIUFFRA. There are approximately 300 exhibits that were included with this referral; is that right?

Mr. BANKS. That's right.

Mr. GIUFFRA. Did you ever review the 300 exhibits that were attached to the referral?

Mr. BANKS. Oh, no. The FBI reviewed that.

Mr. GIUFFRA. Mr. Dodson didn't review those 300 exhibits?

Mr. BANKS. I think he may have reviewed some of them. I'm not sure he did, I would be speculating, but I know that Special Agent Irons and Gretchen—I forget her last name, but two very highly qualified FBI agents spent a great length of time reviewing them and we communicated back and forth about it.

Mr. GIUFFRA. Mr. Dodson, in his deposition at page 59, testified that he did not read the exhibits that were attached?

Mr. BANKS. I wouldn't dispute that.

Mr. GIUFFRA. If we could put up on the screen Mr. Banks' letter of October 16. Now, Mr. Banks, in your letter, you indicate that participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions. Do you recall writing that in your letter?

Mr. BANKS. Yes.

Mr. GIUFFRA. What did you mean by that?

Mr. BANKS. Simply put, I meant the allegations in the referral certainly were not to be complemented. My analysis of the referral told me, as a lawyer and as a U.S. Attorney, that I did not have a case based upon that one referral, and C0004 is all that I ever looked at then or today that would stand up in a court of law and allow me to prove my case beyond a reasonable doubt, and I think others that were qualified reached that conclusion.

My language there was to suggest to the FBI that I'm certainly not trying to complement what I see in the referral. Given the facts and circumstances of how the referral came in and the pressure that was accompanying the referral, that led me to render the opinion that I did, along with my analysis of the referral itself.

Mr. GIUFFRA. When you discussed the witnesses, you include in that the Clintons; am I correct?

Mr. BANKS. Yes, I include all of them.

Mr. GIUFFRA. So you can't rule out the possibility that further investigation by either the Department of Justice or your office might have uncovered additional evidence of wrongdoing by the Clintons?

Mr. BANKS. Oh, no, I didn't rule it out then. I don't rule it out now. But I also knew that common sense told me that if there was going to be an additional investigation, it would obviously have to be done with a task force-type setup with career prosecutors involved with a lot of time and money on their hands because the referral that I saw told me there was going to have to be a quantum leap based upon the substance at hand and being able to get a case that was factually and legally able to be proven in a court of law.

Mr. GIUFFRA. So the question is getting more resources put to the case perhaps and also having main Justice be the entity that would do the investigation?

Mr. BANKS. That question, along with the question of every time I looked at this referral, I could not escape the fact that I was deeply troubled by the political genesis of how that referral had come into the office and the way it was being pursued.

Mr. GIUFFRA. One other question——

Mr. BANKS. At least that was my perception.

Mr. GIUFFRA. In your deposition at page 33, you stated that from your review of the referral, it appeared "that the Clintons were in

a possible position to receive the benefits of a bad loan—a profitable loan and not the detriments of a loan done bad." What did you mean by that?

Mr. BANKS. Obviously, in my deposition, I think that was poor language. What I'm basically saying is the allegations I saw in the referral fit two categories. The McDougals, in my judgment, fit a category of pretty much an insider using the institution as a, so-called, cash cow, writing checks to cover personal debts, et cetera. The outsiders are the borrowers.

What I saw there was the same scenario we had seen in any number of S&L cases and the allegations were that they were borrowers through a corporate entity in which there seemed to be no downside, which raised questions in my mind.

Having said that, trying to analyze his case from my oath of office as U.S. Attorney as well as a practicing lawyer, whether or not Mr. and Mrs. Clinton well knew or engaged in purposeful conduct, I didn't see that in the referral.

Mr. GIUFFRA. Based on the review that you had conducted as of now?

Mr. BANKS. I'm sorry?

Mr. GIUFFRA. Based as of the review you had conducted to that point?

Mr. BANKS. Yes.

Mr. GIUFFRA. Mr. Frazier, there came a time when you received a letter that Mr. Banks had written on January 27, 1993; is that correct?

Mr. FRAZIER. I received that letter as part of a package from the Office of Legal Counsel with the Executive Office for United States Attorneys.

Mr. GIUFFRA. You ultimately treated that letter as a request by Mr. Banks to recuse himself from this matter?

Mr. FRAZIER. Yes, I did.

Mr. GIUFFRA. Why did you treat Mr. Banks' letter as a request to recuse?

Mr. FRAZIER. It was obvious from the letter that he was uncomfortable with the circumstances. It was obvious from the letter that he felt that something more needed to be done.

Given the circumstances and the timing and I knew about the issue of the referral from October, I believe, it was my opinion that a U.S. Attorney's Office shouldn't be involved in a case like this, that this was something that ought to be handled by aspects of main Justice in the Criminal Division.

Mr. GIUFFRA. Why did you believe this was a case that should be handled by main Justice?

Mr. FRAZIER. Because during the time of transition from one political leadership to another, that's where the career people are most resident and are not going to be put in the position of the appearance of impropriety. I knew Mr. Banks was leaving. His role in this didn't weigh into my equation.

There was going to be an Interim U.S. Attorney who more than likely would be a career person, but who would just be acting and at some juncture there would be a democratically appointed U.S. Attorney. It's a small office. The names of the people involved in the case would be few.

Mr. GIUFFRA. You mean the Little Rock U.S. Attorney's Office?

Mr. FRAZIER. The district is a smaller district and it was obvious in a community of that size with the names of the participants, that there were going to be, in my opinion, issues of recusal that might not be seen at first glance, but were eventually going to be found and, consequently, the place for an investigation that would be this sensitive would be within the Department of Justice itself.

Mr. GIUFFRA. Now, did you send this recusal package on to Mr. Gerson?

Mr. FRAZIER. I sent it to Mr. Gerson via the Criminal Division.

Mr. GIUFFRA. That would be Mr. Keeney?

Mr. FRAZIER. Yes, he was the Acting Assistant Attorney General.

Mr. GIUFFRA. When do you recall sending this recusal package to Mr. Keeney?

Mr. FRAZIER. I can look at the records. I believe they're dated.

Mr. GIUFFRA. February 18, 1993?

Mr. FRAZIER. That sounds correct. It may be in here and it may not.

Mr. GIUFFRA. We can put it up on the Elmo.

Mr. FRAZIER. February 18, 1993.

Mr. GIUFFRA. Did you ever see a response from Mr. Keeney?

Mr. FRAZIER. I saw a response that was initialed by Larry Urgenson on behalf of Mr. Keeney sometime toward the middle to the end of May 1993.

Mr. GIUFFRA. If we could put that up on the Elmo, that's the document that bears the Bates number 7309. Is that the memorandum that you're discussing?

Mr. FRAZIER. Yes, it is.

Mr. GIUFFRA. This appears to be dated March 19, 1993?

Mr. FRAZIER. Yes, it is.

Mr. GIUFFRA. You did not see this memorandum until you testified in May or June?

Mr. FRAZIER. My recollection is it was probably May 1993. It was about the time or shortly after the time of the arrival of Mr. Heymann as Deputy Attorney General.

Mr. GIUFFRA. You would have been the person to send this memorandum on to the Eastern District of Arkansas?

Mr. FRAZIER. I was involved in an effort to do so that took place probably the first week in June 1993.

Mr. GIUFFRA. Do you know the reason why you did not receive Mr. Keeney's memorandum sooner?

Mr. FRAZIER. I don't know.

Mr. GIUFFRA. Do you have any explanation as you sit here today?

Mr. FRAZIER. My only explanation would be that while it's addressed to me as Associate Deputy Attorney General, those who handled correspondence within the Department knew at this time that the Deputy's Office was not really an operational entity in the Department.

Ms. Reno was just about to enter as Attorney General about that time, is my recollection. Mr. Gerson had been acting as Attorney General, Deputy Attorney General and Associate Attorney General during that period of time because of the failed efforts to install a new Attorney General. It's very possible that whoever had this to

send on to its next stop saw that it said Associate Deputy Attorney General and thought that I was gone.

Mr. GIUFFRA. Did you ever discuss this memorandum with Mr. David Margolis?

Mr. FRAZIER. Yes, I did.

Mr. GIUFFRA. Who is Mr. David Margolis at this time?

Mr. FRAZIER. He's Associate Deputy Attorney General with the Department.

Mr. GIUFFRA. What did Mr. Margolis and you discuss about this memorandum?

Mr. FRAZIER. My recollection is that the Office of Legal Counsel for the Executive Office for United States Attorneys, during the period of time from when they received Mr. Banks' letter until May or so 1993, asked the status of the recusal package, and I didn't know the status.

At some juncture, Ms. Westbrook, who was counsel, told me either through Mr. Moscato or Mr. Don Henneman or perhaps she mentioned it to me herself that the Criminal Division had done something with the recusal package. I asked her to attempt to reconstruct the package, then. About the time Mr. Margolis came into the Deputy's Office, the package showed up.

Mr. GIUFFRA. Just appeared out of nowhere?

Mr. FRAZIER. Many things appeared from nowhere, a lot of correspondence that obviously had been someplace showed up. I looked at it very quickly. I read the synopsis at the end of the memorandum prepared in the Criminal Division and talked to Mr. Margolis about it at that time.

Mr. GIUFFRA. What did Mr. Margolis say about this particular memorandum?

Mr. FRAZIER. We agreed if there was no case and the Criminal Division had done something to look to see if there was, that if there was no case, that meant that the district didn't necessarily need to recuse itself.

However, since so much time had gone on from the initial recusal package, things may have changed, facts may have been developed, and if they had further information, the Department would revisit the recusal.

Mr. GIUFFRA. Had you assumed that the Criminal Division had spoken with the U.S. Attorney's Office in Arkansas?

Mr. FRAZIER. Yes, I did.

Mr. GIUFFRA. Did you subsequently learn that they had not spoken with the U.S. Attorney's Office in Arkansas?

Mr. FRAZIER. I had been told that.

Mr. GIUFFRA. What was your reaction when you learned that they had not spoken?

Mr. FRAZIER. I was surprised.

Mr. GIUFFRA. Why were you surprised?

Mr. FRAZIER. By reading the memorandum that came from the Criminal Division and its tone, I would never have assumed that they would not have called the U.S. Attorney's Office and discussed the aspects of the referral to try to find out what the office in Little Rock was doing. It never occurred to me that they wouldn't do that.

Normally, in a case—maybe not always, but at least in my experience—when the Department is now looking at something that the

U.S. Attorney's Office has had involvement with, there is communication, people talk. It may be the lowest line of assistant in the Criminal Division talking with the Assistant U.S. Attorney who's basically handling the case, but there is some communication to make sure that something is not missed or left out.

Mr. GIUFFRA. You would have expected communication in this instance?

Mr. FRAZIER. Yes.

The CHAIRMAN. We'll return to that later. The red light has been on for a while. Senator Sarbanes.

Senator SARBANES. I yield to Mr. Ben-Veniste. Mr. Irons, let me just ask you one question. This priority list that was put together involving the RTC on the Arkansas investigation, was the FBI involved in helping to set up that priority list?

Mr. IRONS. I believe I have seen another priority list which is somewhat different from this. We did have input in establishing a priority list.

Senator SARBANES. I gather your big priorities were Savers and First Federal of Little Rock, one of which had $900 million in losses, and one of which had $600 million in losses; is that correct?

Mr. IRONS. Yes.

Senator SARBANES. I take it you were trying to get referrals out of the RTC with respect to those two institutions?

Mr. IRONS. Yes.

Senator SARBANES. You had put them first on the list and then they were supplanted by Ms. Lewis or RTC people and they went off on Madison; is that correct?

Mr. IRONS. That's what I was told.

Senator SARBANES. OK.

Mr. BEN-VENISTE. The loss in Madison was $60 million, more or less?

Mr. IRONS. I have heard various figures. I think, before this case started being mentioned in the media, it was $47 million. Now I've heard $60 million, $65 million. It depends on where you look.

Mr. BEN-VENISTE. Roughly, Savers Savings, which was high on your list, was at least 10 times the loss involved in Madison?

Mr. IRONS. Yes, sir.

Mr. BEN-VENISTE. Now, there was no likelihood of collecting any money from Mr. McDougal in connection with Madison at the time that Ms. Lewis produced her criminal referral; correct?

Mr. IRONS. There was no apparent likelihood.

Mr. BEN-VENISTE. He was living in a borrowed trailer. He had had a nervous breakdown, had been hospitalized; is that correct?

Mr. IRONS. I had read that.

Mr. BEN-VENISTE. Now, I misspoke earlier when I talked about First Federal, which was also Ms. Lewis' responsibility. That was a $900 million loss, as Mr. Pettus has pointed out, but that referral, according to Mr. Johnson, was not made until the spring of 1995, this very year. Does that comport with your recollection, Mr. Irons?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. That is a matter about which you continued to remind Ms. Lewis during 1992, 1993 and 1994?

Mr. IRONS. Yes, sir.

Mr. BEN-VENISTE. Now, with respect to Savers, Ms. Lewis' testimony was that she did not recall that you had made any effort to get her to produce a criminal referral on Savers. What was the situation in terms of who had the actual bank records with respect to First Federal and Savers?

Mr. IRONS. It was my understanding that the RTC had the majority of those records. I would qualify that by explaining that it was my understanding that at the time an institution was taken over by the RTC, they attempted to sell off loan packages for loans or notes that were still performing.

So an investigation could require the FBI to obtain records that the RTC did not have and had been transferred to the institution or entity that purchased the loan package in question, but the starting place would be the RTC.

Mr. BEN-VENISTE. OK. It's fair to say in a general situation when a savings and loan failed, it was taken over by the RTC and the RTC had control of the documents?

Mr. IRONS. I'm not sure if the FDIC or FSLIC actually does the takeover, but I think the RTC is charged with disposing of the assets, so at some point, based on my understanding, they come into possession of substantially all the records of the institution.

Mr. BEN-VENISTE. Let me direct your attention to FBI Exhibit 1529 where your office is writing an August 26, 1992 memo. It comes under the signature of the SAC to the Director of the FBI regarding the utilization of your resources and where you point out that the RTC had control of a dozen failed Arkansas institutions for which referrals have not been received; is that correct?

Mr. IRONS. That's correct. The dozen I'm referring to basically mirrors this priority list that Senator Sarbanes referred to.

Mr. BEN-VENISTE. On August 27, 1992, you wrote a memo reflecting a contact to Jean Lewis asking her about, among other things, providing the Savers criminal referral; correct?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. In your memo to the Director of the FBI on page 2, which is FBI Exhibit 1530, you point out that Ms. Lewis was asked when the referrals on other institutions would be expected and advised that a referral would be provided within several months on Savers Savings, which is expected to contain numerous allegations of significant criminal activity; correct?

Mr. IRONS. Correct.

Mr. BEN-VENISTE. Let me direct your attention to Exhibit 1050, which is your memo to the Special Agent in Charge dated November 10, 1992, where she promised that you would have a criminal referral on Savers and First Federal by 12/31/92; correct?

Mr. IRONS. Correct.

Mr. BEN-VENISTE. But you didn't get it by 12/31/92. Indeed, in your conversation with Ms. Lewis on the 9th—I'm looking at OIC 1132—Ms. Lewis, according to your notes, made a crack about a Democrat replacement for Mr. Banks not being as good as Mr. Banks in connection with dealing with this criminal referral. Is that what you wrote down?

Mr. BANKS. That's correct.

Mr. BEN-VENISTE. In January 1993, according to OIC 1062, you again called Ms. Lewis and asked her about Savers Savings and First Federal; is that correct?

Mr. IRONS. We had a telephone conversation.

Mr. BEN-VENISTE. She advised you that she was going to produce a criminal referral on this $900 million loss and $600 million loss in each of those institutions within 120 days. That's roughly, I guess, April 1993 that she was promising?

Mr. IRONS. I believe—not to quibble, but she said the first of several referrals was 120 days from completion, so she may have been referring just to one. I don't know which one.

Mr. BEN-VENISTE. But you didn't get anything in 1993 at all, as a matter of fact?

Mr. IRONS. No, sir.

Mr. BEN-VENISTE. We have been provided with information about which Ms. Lewis has been questioned in her deposition that reflects that on or about March 8, 1993, she was contacted by an individual named Foy Phillips and that individual was an insider involved in bank fraud and had been prosecuted and had entered into a plea of guilty in Federal court in Houston, and that individual provided Ms. Lewis on March 17th, 18th and 19th with a large quantity of documents relating to Savers Savings Bank; correct?

Mr. IRONS. That's what this memorandum reflects.

Mr. BEN-VENISTE. Ms. Lewis testified that she looked at the documents and put them aside, didn't do anything with them until much, much later when she gave them to professional legal services. But what she did testify to was that she wrote a letter on behalf of Mr. Foy Phillips. Do you have that in front of you?

Mr. IRONS. Is this the letter to Mr. DeWaal?

Mr. BEN-VENISTE. Yes, the letter to Mr. DeWaal. Could we put that up, please. In that letter, Ms. Lewis is writing to the prosecutor who is in charge of the case involving this individual who's provided her all this information and all of these documents. Now, let me ask you first, you were vitally interested in Savers Savings?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. Did Ms. Lewis ever tell you that she had met with Foy Phillips?

Mr. IRONS. I don't recall knowing this.

Mr. BEN-VENISTE. Did Ms. Lewis ever provide you with any of these numerous documents which, according to Foy Phillips and Ms. Lewis, reflected criminal activity at Savers Savings?

Mr. IRONS. No.

Mr. BEN-VENISTE. Did Ms. Lewis ever copy you in or pull to your attention the fact that she had written a letter to the prosecutor involved in Mr. Phillips' case, telling that prosecutor about Mr. Phillips' significant cooperation with her?

Mr. IRONS. I don't recall this and looking over notes related to this deposition, there's a phone message where I've made some notes to myself that Jean Lewis at some point called regarding input for a letter, and I never spoke to her and I don't know what letter that was. That would be the closest that I can recall that would be——

Mr. BEN-VENISTE. Savers Savings was No. 2 on your hit parade; correct?

Mr. IRONS. I believe I would remember it.

Mr. BEN-VENISTE. Here, Ms. Lewis is meeting with an insider who's giving her a package involving fraud in that institution. She takes the documents, puts them aside somewhere, never called you about it, writes a letter to the prosecutor saying that Mr. Phillips should get credit for his substantial cooperation, presumably in connection with his sentencing and yet you don't hear anything about this, either about Foy Phillips or the documents?

Mr. IRONS. No.

Mr. BEN-VENISTE. At the end of the letter, Ms. Lewis states, addressing specifically the criminal investigative side, the nature of the information offered by Mr. Phillips was of very significant interest and is expected to provide the basis for criminal referrals which will be submitted to the U.S. Attorney in the Eastern District of Arkansas.

Can you square that statement with your experience in terms of continuing to push Ms. Lewis for criminal referrals on Savers and the fact that she never brought this to your attention?

Mr. IRONS. I can't remember on exactly what dates she had said that we may be receiving the referral soon. It could have been around this time that she thought she did that, but what I can tell you is we didn't get it.

Mr. BEN-VENISTE. You never got it?

Mr. IRONS. No.

Mr. BEN-VENISTE. Did you ever get a referral on Savers Savings?

Mr. IRONS. Not that I recall. I believe that since I've been detailed to the Office of Independent Counsel, again, like the First Federal referral, there could have been a referral received by FBI Little Rock in the last 6 months. Those referrals are still addressed to me and I send them over. I think a Savers referral did come in the last 6 months.

Mr. BEN-VENISTE. Again, Ms. Lewis had left by that time?

Mr. IRONS. I'm not sure when she left.

Mr. BEN-VENISTE. Finally, Mr. Chairman, the cc on the bottom of the page of this letter is to Mr. Michael P. Carnes, attorney at law, we presume to be the attorney representing Mr. Phillips, Mr. R. Foy Phillips, Mr. Richard Iorio and Lee Ausen, both supervisors of Ms. Lewis, but no cc to you; is that correct, Mr. Irons?

Mr. IRONS. That's correct.

Mr. BEN-VENISTE. Mr. Chairman.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. Mr. Irons, I would like to direct your attention to another memo you sent to the SAC Little Rock. It has a date of August 20, 1993. It relates to what we talked about earlier having to do with the issue of a concern about possible White House involvement with respect to the investigation, about a Little Rock attorney getting involved in trying to quash the investigation. Let's put it up on the board.

Do you have this? It's dated August 20, 1993.

Mr. IRONS. Yes, I do.

Mr. CHERTOFF. I want to read this aloud and I want to ask you some questions about it. It's really quite extraordinary. "On August 16, 1993, writer"—that's you; correct?

Mr. IRONS. Correct.

Mr. CHERTOFF. —"telephoned SSA Kevin Kendrick at FBI HQ"—that's you?

Mr. KENDRICK. Yes.

Mr. CHERTOFF. Have you seen this memo before, by the way?

Mr. KENDRICK. I believe I saw it at my deposition.

Mr. CHERTOFF. —"to advise the Resolution Trust Corporation had advised that it would provide a referral concerning Madison Guaranty Savings & Loan Association by September 2, 1993. SSA Kendrick was familiar with the details of the previous RTC referral received by Little Rock in October 1992, and the circumstances surrounding it. Writer"—that's you again, Mr. Irons?

Mr. IRONS. Correct.

Mr. CHERTOFF. —"advised SSA Kendrick this office might open a case on MG"—that would be Madison Guaranty?

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. —"prior to receipt of the referral due to information developed in captioned matter." Now, when you say "captioned matter," that's the SBA case involving David Hale?

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. So I take it what you're saying here is, as of this date, you're aware that there may be additional referrals relating to Madison Guaranty. You were considering opening the case on Madison Guaranty based on information you had developed out of the Hale investigation?

Mr. IRONS. Yes.

Mr. CHERTOFF. It then goes on to say, "He was further advised captioned matter"—and, again, that's the Hale case—"had resulted in a subject mentioning individuals common to the October 1992 RTC referral."

Now, when you say "a subject mentioning individuals common to the October 1992 referral," who is the subject?

Mr. IRONS. David Hale.

Mr. CHERTOFF. What you're saying here, I take it, is that Mr. Hale had mentioned as of October 16, certain individuals whose names you were familiar with because they had been part of the October 1992 referral?

Mr. IRONS. Yes.

Mr. CHERTOFF. So you are, for purposes of this memo, pulling together the information that's anticipated to come in the later referrals in 1993; the information that's come from Hale based on the investigation with respect to Capital Management and the identity of individuals who had been named as early as the October 1992 referral; is that correct?

Mr. IRONS. That's correct.

Mr. CHERTOFF. The memo goes on to say, "Writer further advised the Assistant U.S. Attorney assigned to the matter reported being told a Little Rock attorney"—and we now know that's Mr. Mays; correct?

Mr. IRONS. Correct.

Mr. CHERTOFF. —"had traveled to Washington instant date"—that means, I guess, this day—"to meet with unknown officials to attempt to have the investigation quashed."

Again, I take it that Mr. Jackson didn't know on whose behalf this lawyer was traveling; is that correct?

Mr. IRONS. I believe that it was on Mr. Hale's behalf.

Mr. CHERTOFF. Did you know whether it was Mr. Hale's attorney?

Mr. IRONS. I did not know that.

Mr. CHERTOFF. In the memo, you just indicated the attorney is traveling. I take it you don't know who actually instigated or asked the attorney to go to Washington?

Mr. IRONS. No, sir, I don't.

Mr. CHERTOFF. Now, continuing with the memo, it says, "SSA Kendrick was asked to be alert for any questions from DOJ or other sources indicating interest in captioned matter or the upcoming referral."

You're essentially telling Agent Kendrick to be alert if someone within the Department asked some questions about the Hale case or the upcoming Madison referrals. Why did you say that to Agent Kendrick?

Mr. IRONS. Because Webb Hubbell was in the Department of Justice.

Mr. CHERTOFF. Then it says, "He advised he had been questioned about MG by his superiors approximately 2 weeks ago."

When you say "he advised," Agent Irons, do you mean that Mr. Kendrick advised you of that?

Mr. IRONS. Yes.

Mr. CHERTOFF. What is your recollection of what Mr. Kendrick advised you as recorded in this sentence?

Mr. IRONS. I believe he said that through headquarters, he had also heard some rumblings about some additional RTC referrals.

Mr. CHERTOFF. This is the reference to being questioned about MG by his superiors approximately 2 weeks ago?

Mr. IRONS. Yes.

Mr. CHERTOFF. Agent Kendrick, do you remember this conversation you had with Agent Irons concerning this issue of this attorney coming to Washington?

Mr. KENDRICK. Yes, sir.

Mr. CHERTOFF. You remember that Agent Irons asked you to be alert for expressions of interest in this matter based upon this attorney's anticipated trip to Washington?

Mr. KENDRICK. Yes, sir.

Mr. CHERTOFF. What was your reaction to that?

Mr. KENDRICK. Not really much of a reaction at all because my recollection of the conversation was that this was something that was happening, but that we didn't really have any real concrete information at the time. I believe that's why he asked Steve, after he got some more concrete information, to send me a communication to that effect.

Mr. CHERTOFF. It goes on to say, again, that you had advised Agent Irons that you had been questioned about MG by your superiors 2 weeks earlier. Again, what is your recollection of what that referred to?

Mr. KENDRICK. I can't recall who asked the question, whether it was my unit chief or my section chief at the time, what the status of the Madison case was, but I believe I did an E-mail, if memory serves me correctly, dated August 3, 1993, that basically gave a rehash of my knowledge of the events up to that time.

Mr. CHERTOFF. Now, coming back to you again, Agent Irons, you then "advised Agent Erickson of the rumored visit of the attorney to Washington and the potential sensitivity of information a subject was claiming to have."

Why did you communicate that to Agent Erickson?

Mr. IRONS. Supervisory Agent Kendrick was in the Financial Institution Fraud Unit and the conversation with him related to Madison as a bank fraud investigation. I was already in contact with Jane Erickson, who is a Supervisor in the Governmental Fraud Unit which covered SBA fraud, and I was advising her—basically, I was trying to throw out a net as wide as I could get it at headquarters without being too alarmist about this so we could have as many traps out as possible in case that happened.

Mr. CHERTOFF. Did you also tell Agent Erickson about this issue involving the White House calling the SBA and trying to get them to be careful how they characterized the Hale matter in their public statements?

Mr. IRONS. I believe I did. Due to the nature of this case, Jane Erickson, as the Supervisor, was always calling me.

Mr. CHERTOFF. Let me see if I can help focus you on that. There are a set of what I believe are her notes, FBI Exhibit 1934, if we can put them up. It will take us a moment and if you bear with us—do you have a copy of it in front of you? It's handwritten notes.

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. Do you recognize Agent Erickson's handwriting?

Mr. IRONS. I can't say that I do.

Mr. CHERTOFF. It says "9/28/93 Irons, LR." The first item is "talk to First Assistant." This is September 28, 1993. "Not want to issue subpoena. SBA to make demand, interview or depose." The next item says, "mentioned Teckler." Mr. Teckler was the Deputy General Counsel of the SBA; correct?

Mr. IRONS. I knew he was a SBA official. I wasn't sure what his title was.

Mr. CHERTOFF. It says "WH calling SBA" and goes on to say "as WWD. WH wants SBA HQ, wants them to put water on by saying no more guilty."

Now, I understand these are her notes of a conversation with you. Does this refresh your memory about what you said to her concerning this issue about the White House trying to get the SBA to put the lid on or throw cold water on these allegations?

Mr. IRONS. Yes, sir, it does.

Mr. CHERTOFF. Tell us what you recall.

Mr. IRONS. I note that the date of Jane Erickson's notes is the same date that I had my conversation with Ms. Seay from the SBA, so I either called her shortly after the conversation with Ms. Seay or she may have called me because the investigation—what I was relating to her is—I mentioned Teckler. I think I had seen his name in the paper or maybe on television.

I thought, since he was apparently a DC guy, that she might be more tuned in to who he was or what he was up to, so I was just telling her—relating that, per my conversation with Ms. Seay, it was my understanding that the White House had contacted the SBA in regards to Whitewater Development and the White House was desirous of having the SBA at headquarters level, because

that's where Teckler was, to throw water on this and basically characterize this as being that the extent of the fraud stopped at David Hale.

Mr. CHERTOFF. Why did you tell this to Agent Erickson?

Mr. IRONS. Due to my job, I'm somewhat skeptical and cynical about some things, and I thought that the SBA might bear watching on this since we were going to have to rely on them for our investigation of Hale and any continuing investigation, so I just wanted to make headquarters aware of potential political interference in this investigation.

Mr. CHERTOFF. During the course of the earlier month, in August, had you received calls or contact from a Mr. Hawkins from the SBA Inspector General's Office?

Mr. IRONS. Yes, sir.

Mr. CHERTOFF. Had he asked you questions about whether, in addition to the anticipated indictment of Mr. Hale, a couple of attorneys were going to be indicted?

Mr. IRONS. Yes, he did.

Mr. CHERTOFF. Do you remember the two attorneys he was referring to?

Mr. IRONS. Yes.

Mr. CHERTOFF. Who were they?

Mr. IRONS. Charles Matthews and Eugene Fitzhugh.

Mr. CHERTOFF. Who were Matthews and Fitzhugh?

Mr. IRONS. They were indicted the same time as David Hale. They were two local attorneys and they had been involved in a fraud with David Hale involving money obtained from an individual named Townsend, Eric Townsend.

Mr. CHERTOFF. I have to tell you, you've memorialized your conversation with Ms. Seay both by communicating it to Ms. Erickson, who wrote it down, and by writing it in your own notes.

The CHAIRMAN. I want to ask, Counselor, and I know you're making a lot of progress and the Minority has not asked, but I'm going to ask for their indulgence if they want us to pursue this, or I'm willing to go back to Senator Sarbanes.

Senator SARBANES. How much more do you have?

Mr. CHERTOFF. One or two more questions on this.

The CHAIRMAN. Then continue.

Mr. CHERTOFF. You had told Ms. Erickson about this, and she recorded it. You had made your own note relating to your conversation with Ms. Seay on that date. I have to tell you that Ms. Seay, in her deposition at pages 15 through 17, said I do not remember making this statement. She has no recollection of it.

Do you stand by the statement that you memorialized in your recorded memorandum and that you told Ms. Erickson contemporaneously and that she recorded?

Mr. IRONS. She said it. I've got notes that I wrote down as she was saying it.

Mr. CHERTOFF. Thank you.

The CHAIRMAN. Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

Agent Irons, I would like to address this issue of Mr. Mays because I think it's been left in a somewhat unfair posture to the people who are not here to testify. I'm surprised it was even raised.

First of all, Mr. Mays was called to testify. Mr. Hubbell was questioned about any contact with Mr. Mays. Fletcher Jackson was questioned about whether he learned that he, Mr. Mays, had gone and talked to anybody in Washington about this, and he said no, Mr. Mays and Mr. Hubbell denied having any contact. Indeed, is it correct, sir, that there is no indication that Mr. Mays contacted anybody on behalf of Judge Hale, whether or not Mr. Mays ever represented Mr. Hale?

Mr. IRONS. I think I may have been asked a similar question by Mr. Chertoff before. I'm not aware of knowing, during that timeframe, whether the trip occurred or if he talked to anybody or who that might have been.

Mr. BEN-VENISTE. Indeed, there would be nobody more interested than me in finding out if there was any attempt to fix any case with this Administration or any other Administration, but the state of the record, I think, we will have to say at this point is that there is no evidence that has been brought to our attention to substantiate any such improper contact, much less any action of an untoward nature or otherwise, favorable to Mr. Hale.

Let me ask you this: With respect to Mr. Hale, however, did there come a time when you were contacted directly by Randy Coleman, Mr. Hale's lawyer?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. Did you know Mr. Coleman previously?

Mr. IRONS. I believe I had seen his name as representing a subject of another investigation, but I didn't know him really from anybody else.

Mr. BEN-VENISTE. So he called you more or less out of the blue?

Mr. IRONS. By the time he called me, I knew who he was and that he was representing David Hale, but I had not had any dealings with him.

Mr. BEN-VENISTE. You had been personally involved in the execution of a search warrant against Mr. Hale; correct?

Mr. IRONS. Correct.

Mr. BEN-VENISTE. You removed various books and records from his offices at Capital Management Services?

Mr. IRONS. Correct.

Mr. BEN-VENISTE. When do you recall this conversation having taken place?

Mr. IRONS. If there's something I've read, it would help me. But I would probably put this in August, mid-August 1993.

Mr. BEN-VENISTE. It was while Fletcher Jackson was in charge of the Hale investigation?

Mr. IRONS. Yes, and I might be able to narrow that down. I think by the time he called, Paula Casey had been sworn in as U.S. Attorney so it may have been actually past the middle of August. It may have been more toward the end of August, end of September.

Mr. BEN-VENISTE. By this time, Fletcher Jackson had provided Mr. Coleman with at least one draft of a proposed indictment against his client and there had also been some discussions about whether Mr. Hale would then enter a plea and under what circumstances?

Mr. IRONS. Generally, yes, I understood that.

Mr. BEN-VENISTE. This conversation was on the telephone?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. What did Mr. Coleman say to you and what did you say to him?

Mr. IRONS. Mr. Coleman started off by wanting to talk to me about the circumstances under which David Hale could cooperate and what he might want to offer, and I think that fairly early in the conversation, as politely as I could, I told Mr. Coleman that plea negotiations were the province of the U.S. Attorney, not the FBI, and that while I appreciated him contacting me, that I would not enter into negotiations concerning a plea on behalf of the Government.

Mr. BEN-VENISTE. Did Mr. Hale state his position with respect to a proffer?

Mr. IRONS. This was Mr. Coleman.

Mr. BEN-VENISTE. I'm sorry. Did Mr. Coleman, on behalf of Mr. Hale, state his position with respect to a proffer?

Mr. IRONS. At some point, I think he said something about a proffer in that conversation, or I may have brought it up—I'm not sure—but I think a proffer was discussed.

Mr. BEN-VENISTE. Was he willing to make a proffer without condition?

Mr. IRONS. I had a preconceived notion of what he had as far as a condition or not based on the communications with the U.S. Attorney's Office. Fletcher had told me what Randy Coleman's position was.

Mr. BEN-VENISTE. What did he tell you?

Mr. IRONS. Basically, that Randy Coleman wanted to know what kind of deal he was going to get for Hale before Hale made the proffer.

Mr. BEN-VENISTE. Is that standard procedure, or is that the opposite of standard procedure?

Mr. IRONS. I've seen where sometimes an attorney will make a representation to a defense attorney what they're considering as the universe of charges and give them an assurance that the proffer will not result in any increased charges, but that is not the rule. Usually, it's just that you come in and tell us, and we'll decide after that.

Mr. BEN-VENISTE. Now, Mr. Jackson was taking the position that Mr. Hale's conduct was felony conduct, and he was not going to mislead Mr. Coleman into thinking that Mr. Coleman was going to be able to bargain him down below one felony count. Is that your understanding of what the status of things were?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. What did Mr. Coleman tell you about what he wanted for his client?

Mr. IRONS. Again, I don't know if he mentioned what he wanted or if I was just aware of what I thought he wanted.

Mr. BEN-VENISTE. Go ahead. I didn't mean to interrupt.

Mr. IRONS. I told him that, lest he would be under some misunderstanding, it was my understanding that the FBI office and the U.S. Attorney's Office were in agreement that there should be at least one felony count.

In fact, I told him I was insisting on it from the standpoint of the Bureau. I did tell him that if David Hale ultimately cooperated

and the FBI judged his cooperation to be sincere and truthful, that if appropriate, either myself or some other agent would certainly be available to say that at the right time in court, but we were a long way away from there.

Mr. BEN-VENISTE. On the Hale matter, with respect to Mr. Jackson, Ms. Casey, Mr. Johnson or any of the individuals who were in charge of that matter prior to the time that Mr. Mackay was assigned to take over the Hale investigation, can you tell us whether there was anything improper done in connection with the handling of the Hale investigation?

Mr. IRONS. I'm not aware of anything improper that any of those three people did.

Mr. BEN-VENISTE. Mr. Kendrick, can you tell us when you first became aware of a criminal referral having been received by Little Rock in connection with the Madison matter?

Mr. KENDRICK. In reference to the first referral, sir?

Mr. BEN-VENISTE. Yes, sir.

Mr. KENDRICK. It would have been during my first week of assignment at headquarters which was during the week of September 23, 1992.

Mr. BEN-VENISTE. How did you learn about it?

Mr. KENDRICK. I believe that information was communicated to me orally by my supervisor.

Mr. BEN-VENISTE. Who was that?

Mr. KENDRICK. Ronald Dick.

Mr. BEN-VENISTE. What happened after that?

Mr. KENDRICK. I don't specifically recall, but I believe Mr. Dick just advised me that there was a criminal referral in existence and to be on the lookout for it.

Mr. BEN-VENISTE. Did there come a time when there was a conversation between you and Steve Irons?

Mr. KENDRICK. Yes, Steve and I had several conversations during that time period.

Mr. BEN-VENISTE. What was the first?

Mr. KENDRICK. I don't specifically recall when the first occurred or when actually any of them occurred, but——

Mr. BEN-VENISTE. Now, according to FBI headquarters document number 985, on the 7th of October, there was a fax transmittal where you received a copy of the criminal referral?

Mr. KENDRICK. That's correct, sir.

Mr. BEN-VENISTE. Prior to that, had you made a request for a copy of the criminal referral?

Mr. KENDRICK. I believe that's correct.

Mr. BEN-VENISTE. Was that in a telephone conversation?

Mr. KENDRICK. Yes, sir.

Mr. BEN-VENISTE. What was the nature of this telephone conversation?

Mr. KENDRICK. I don't recall the specifics, sir, other than to request that Steve fax us a copy of the referral.

Mr. BEN-VENISTE. Do you recall, Mr. Irons, what the substance of the conversation was?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. Would you tell us, please?

Mr. IRONS. Mr. Kendrick told me he had attended a meeting that day, also attended by some FBI superiors of his and Department of Justice representatives, that the purpose of the meeting was to discuss that Little Rock may have received an RTC referral mentioning—I don't know if he said mentioning prominent individuals but a hot referral, and that they were just sitting on it and he was calling to determine whether or not we had such a referral.

Mr. BEN-VENISTE. That was on October 6, 1992?

Mr. IRONS. Yes.

Mr. BEN-VENISTE. Mr. Kendrick, do you recall who brought that to your attention?

Mr. KENDRICK. I'm not quite sure who would have brought that to my attention. I can only surmise that it was my supervisor, Mr. Dick.

Mr. BEN-VENISTE. Mr. Pettus, at this point, you had not opened a formal file relating to that criminal referral, had you?

Mr. PETTUS. I had not opened what I would call an active investigation file, that's correct.

Mr. BEN-VENISTE. Would you explain to us what the consequences are of opening an active investigation file?

Mr. PETTUS. When the referral came in, as we've explained earlier, before we opened an active investigation we did what I think the Bureau in one communication called an open and limited investigation. Basically, we're not going out and doing overt active investigation or Grand Jury investigation, I think as Mr. Banks recalled. We're doing a preliminary to see if there's justification there to go forward in an active investigation.

Mr. BEN-VENISTE. If you had opened an active investigation and keyed in the targets and witnesses and so forth, who would have had access to that material that now goes into your computer system at FBI?

Mr. PETTUS. In our office, it would be an active investigation.

Mr. BEN-VENISTE. Who else would have access to that computerized information?

Mr. PETTUS. I'm not sure—I believe headquarters, of course, they would, but I believe that's it.

Mr. BEN-VENISTE. Mr. Kendrick, do you know how it was that the people at the FBI in headquarters were alerted to the fact that this criminal referral had been received?

Mr. KENDRICK. No, sir, I don't.

Mr. BEN-VENISTE. Mr. Pettus, did you make a conscious decision that this criminal referral would not go into the computer system so as to be accessed by anyone inside your office or otherwise?

Mr. PETTUS. Absolutely not, sir.

Mr. BEN-VENISTE. What did you do with the criminal referral? Where did you keep it?

Mr. PETTUS. Of course, we kept it within the office, and I'm not sure whether it was a preliminary type or a limited one. I'm not sure how we really opened it in the office. My main concern is that we didn't have an active, ongoing, overt investigation.

Mr. BEN-VENISTE. Did you receive some communication from headquarters that suggested that you take some kind of action with respect to the criminal referral?

Mr. PETTUS. At what time period?

Mr. BEN-VENISTE. In October.

Mr. PETTUS. Let me back up a little. We sent the article on October 26 which basically said it was coming in and set out most of the details. Then it came in on or about September 2. We had contact with the U.S. Attorney's Office and our preliminary assessment was that, particularly as to the witnesses, there was probably not substantial information to open an active investigation based on all of the factors that we've discussed previously today.

At some period, I got a call from an official at the Criminal Justice Division wanting me to brief him and update him on the details, and I believe that's Mr. Verinder. I'm not sure of the date.

Mr. BEN-VENISTE. On the 9th of October, did you receive a teletype from the Director of the FBI asking you to initiate a limited investigation?

Mr. PETTUS. I believe that's correct, sir.

Mr. BEN-VENISTE. Were you given a timeframe in which to conclude your limited investigation?

Mr. PETTUS. Yes, sir, they wanted it completed by the 16th of October.

Mr. BEN-VENISTE. At that point, what were you to report?

Mr. PETTUS. Basically, and again, it's been alluded to earlier, we got the referral, the formal RTC referral in our office, but we didn't get the 300 attachments which went to Mr. Banks' office. As I said earlier, we're trying to be fair and objective, and I think this is headquarters being cautious, but, as I recall, the request was that we wanted to make sure we had reviewed all of those documents and, basically, a representative from the U.S. Attorney's Office and Mr. Irons did that review.

Mr. BEN-VENISTE. You all got together and had a meeting, did you not?

Mr. PETTUS. I'm sure there was a meeting, right.

Mr. BEN-VENISTE. What was the conclusion, Mr. Banks?

Mr. BANKS. As to the meeting involving the FBI?

Mr. BEN-VENISTE. Right.

Mr. BANKS. The conclusion to the meeting was that I wrote a letter. I think we met sometime around October the 14th or that week in which this information was then given to me that this investigation was limited or otherwise had to be completed by the 16th, and I had heard nothing from the Department of Justice.

I basically was saying, in essence, I don't really understand why the sense of urgency, and I'm not going to do anything whatsoever that could invoke a Grand Jury mishap involving this national election period, end of sentence, and I don't really want to meet any more or talk any more about it. That's with all due respect to the FBI, but I don't understand why this is coming in this manner.

Mr. BEN-VENISTE. Mr. Pettus, did you communicate Mr. Banks' position to headquarters at FBI?

Mr. PETTUS. I'm sure I did. We sent a teletype. I believe it went out the 16th.

Mr. BEN-VENISTE. Did you include the substance of Mr. Banks' letter in that teletype?

Mr. PETTUS. I don't think I mentioned it specifically, no. I basically summarized our review, the assessment and his opinion, but

I don't think I specifically—I am pretty sure I didn't—we didn't specifically mention his letter.

Mr. BEN-VENISTE. Do you have in front of you a teletype of the 16th of October, which is FBI 526? Have you got it there, sir?

Mr. PETTUS. Yes.

Mr. BEN-VENISTE. Let me direct your attention to the bottom of the first page of this teletype from the 16th of October. My experience with the FBI is sometimes the to's and from's don't actually reflect who sent it or who got it, but what was your understanding about who it was sent to?

Mr. PETTUS. While all teletypes go to the Director, and they're sent from the SAC to the Director, basically it was——

Mr. BEN-VENISTE. Who were you talking to at that point?

Mr. PETTUS. The Criminal Investigation Division is where it's going, attention, Assistant Director Larry Potts.

Mr. BEN-VENISTE. Larry Potts?

Mr. PETTUS. Right.

Mr. BEN-VENISTE. At the bottom of the page, the first page of the teletype, it says:

During the period October 9–16, 1992, United States Attorney, Eastern District of Arkansas and White-Collar Crime Supervisor and Financial Analyst, FBI, Little Rock, conducted an extensive review of the referral and all of the approximately 300 exhibits furnished to the United States Attorney by the Resolution Trust Corporation. The U.S. Attorney concurs there is absolutely no factual basis to suggest criminal activity on the part of any of the individuals listed as witnesses in the referral. The United States Attorney feels the limited data furnished may indicate criminal activity on the part of captioned subjects, James and Susan McDougal, and Lisa Anspaugh. However, U.S. Attorney is holding provision of a prosecutive opinion regarding those subjects in abeyance.

Is that correct, sir?

Mr. PETTUS. That's correct.

Mr. BEN-VENISTE. I've run over my time, Mr. Chairman.

The CHAIRMAN. I'm going to let Counsel continue because I want to conclude this and give you the opportunity to do it in an uninterrupted fashion. Thank you, sir. Why don't you continue.

Mr. BEN-VENISTE. I just have one following question here. At this point, after your October 16 memo where you essentially say you're in a noninvestigative mode, that you're not going to take any overt action, does FBI headquarters endorse that position, agree to it?

Mr. PETTUS. I believe so.

Mr. BEN-VENISTE. Mr. Ivey.

Mr. IVEY. Mr. Frazier, I wanted to come back to you and ask a couple of follow-up questions. When you were last testifying, you mentioned that you received a March 19 memo from Mr. Keeney, and I wanted to ask what you did after you received the memo. Did you write any memorandum at all?

Mr. FRAZIER. I didn't receive the March 19th memo from Mr. Keeney.

Mr. IVEY. I'm sorry. Did there come a time when you drafted a memo of your own in conjunction with Mr. Margolis?

Mr. FRAZIER. We did draft a memorandum in the first part of June 1993.

Mr. IVEY. What led you to draft that memorandum?

Mr. FRAZIER. It was the resurrection of the recusal package that showed back up in the Deputy Attorney General's Office by one manner or another.

Mr. IVEY. Do you recall what was in the recusal package?

Mr. FRAZIER. There was a copy of the memo done by the Criminal Division, that was initialed by Mr. Urgenson, that had my name on it, and included with that was an opinion written by someone in the Criminal Division that dealt with the referral.

Mr. IVEY. Do you know if that was Mark McDougal?

Mr. FRAZIER. I've heard the name, but I'm not sure I ever knew who it was.

Mr. IVEY. Do you recall the substance of that opinion?

Mr. FRAZIER. The part that I read was the very ending which seemed to indicate that they didn't find that there was a case of prosecutive merit. That dovetailed with Mr. Keeney or Mr. Urgenson's comments when they said that they wouldn't disagree with the U.S. Attorney's Office if they declined the case.

Mr. IVEY. Did you relay that view to the U.S. Attorney's Office in Little Rock?

Mr. FRAZIER. I did not. We prepared a memorandum that, from my memory, was for Mr. Margolis' signature. That memorandum would have transmitted Mr. Keeney's letter. It would have transmitted the opinion that was written by the Criminal Division, and would have notified the district that the issue of recusal had become moot from our perspective unless they had additional information not contained in the referral.

Mr. IVEY. The McDougal memorandum, I think, said that there was no factual claims that could be found in the referral to support the designation of Mr. and Mrs. Clinton as witnesses. Do you recall that language?

Mr. FRAZIER. I did not look at that memorandum in any great detail. I went directly to the summary at the end to see what the recommendation was. Then, based on that and the cover letter from Mr. Keeney, or whoever prepared it, we made the assumption that there wasn't enough to the case to warrant any further action.

Mr. IVEY. I believe you mentioned that you had some concern about the absence of contact with the U.S. Attorney's Office in Little Rock.

Were you aware at the time that letters had been received by the Department of Justice in Washington from Mr. Banks expressing his concerns about the referral?

Mr. FRAZIER. I was aware that there had been communication from Mr. Banks with the Department, yes.

Mr. IVEY. In addition, the teletype that Mr. Pettus has testified about expressing the opinion of the FBI in Little Rock about the referral, were you aware of that as well?

Mr. FRAZIER. No.

Mr. IVEY. Now, Mr. Irons, I wanted to ask you a few questions as well, with respect to the Seay conversation that was memorialized in your memorandum. You mentioned Teckler in the memorandum; is that correct?

Mr. IRONS. That's correct.

Mr. IVEY. Mr. Teckler was or is the Deputy General Counsel for the SBA?

Mr. IRONS. I don't know what his position is. I just knew him from whatever media report that I was referring to in the memorandum as a spokesman for the SBA.

Mr. IVEY. I take it you are unable to recall the media report that you——

Mr. IRONS. I don't know if it was in the newspaper or on television.

Mr. IVEY. Mr. Chertoff pointed out a few moments ago that Ms. Seay testified that she could not remember having made the statements that were in your memo there. I wanted to read some of it just so we have it in the record. The question was:

Question: Did you advise Irons that you had spoken to SBA officials in Washington, possibly Mark Stephens, and did you tell him that you understood—did you tell Irons that you understood that officials from the White House had urged the SBA to make such a characterization? And when I say 'such a characterization,' I'm talking about a characterization that certain activities were not criminal in nature due to the mention of Whitewater Development in some news accounts and the White House's desire to avoid any inference that criminal activity could have occurred in relation to Whitewater Development and Hale's company?

Her answer is:

Answer: I don't believe so.

In addition, Mr. Teckler was questioned, not about that statement, he wasn't aware of the memo that you had, but he was asked this question:

Question: Did officials from the White House contact you or someone at the SBA and ask you to make this characterization due to the mention of Whitewater Development?

Answer: No, not me and I have no knowledge of them contacting anyone else.

I think he also testified that, in statements he made to the press:

My comment was always that we had no information which would substantiate what Mr. Hale was alleging in his defense or his allegations in an attempt to be—to plea bargain.

Do you recall if that was his statement that raised your concern?

Mr. IRONS. I don't. I don't remember the statement.

Mr. IVEY. Is it fair to say you don't really have any recollection of those events at this point?

Mr. IRONS. I recall because of my memo that I knew I had heard that Teckler made a statement, and Cecelia Seay told me what my memo reflects.

Mr. IVEY. OK. I have no further questions.

Senator SARBANES. Mr. Irons, let me ask you a question. Mr. Iorio testified, as I recall, that it took about 90 days once they made a referral before they heard back from the FBI or the U.S. Attorney's Office. Is that your recollection?

Mr. IRONS. That's not——

Senator SARBANES. Generally speaking.

Mr. IRONS. No, that's not my experience.

Senator SARBANES. What's your experience been, 30 to 60 days?

Mr. IRONS. No, sir. A week.

Senator SARBANES. Mr. Banks, what was your experience in dealing with these things?

Mr. BANKS. You mean the initial contact? Just a verbal contact acknowledging we had received the referral?

Senator SARBANES. Ms. Lewis sent in a referral and immediately she began calling up to see what you had done with that referral, and apparently your assistant, Mr. Dodson, was contacted over and over again. That was an unusual occurrence, was it not?

Mr. BANKS. Yes, sir, that was an unusual occurrence.

Senator SARBANES. It's because of that you felt you were being put under pressure to act on this matter which helped, in part, eventually to provoke your letter of October 16th; is that correct?

Mr. BANKS. Yes, sir. The series of calls that she made over a period of 2 to 3 weeks struck me as being unusual. I saw no need for the sense of urgency, saving except for who the witnesses were in the referral. If it hadn't been for the witnesses, Senator, I don't think that there would have been anything like that in the sense of urgency by Ms. Lewis, so it caused me to be very circumspect about it.

Senator SARBANES. Mr. Irons, you were being subjected to a barrage of phone calls as well; is that correct?

Mr. IRONS. I was receiving frequent contact, yes, Senator.

Senator SARBANES. Now, Mr. Banks, in your letter to Mr. Pettus, you say:

> You and I know in investigations of this type, the first steps, such as issuance of Grand Jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy.

So you were facing a situation, I take it, where you had gotten this referral, you were being pressed to act upon it, and you recognized that any action you took in terms of first steps would probably then lead to widespread media stories; is that correct?

Mr. BANKS. Yes, sir. There was no question in my mind, from my experience as U.S. Attorney, that any overt steps to pursue the investigation involving Grand Jury subpoenas would be almost impossible to continue to keep private.

Senator SARBANES. That's why you then went on to say:

> For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

Actually, the President you were referring to there was President Bush?

Mr. BANKS. Yes, sir.

Senator SARBANES. Now, this was on October 16th?

Mr. BANKS. Yes, sir. I think I dictated that on Friday of the week of the 14th, right before the deadline.

Senator SARBANES. I think, if I'm not mistaken, from the report that Mr. diGenova issued about the passport matter, that that issue blew up on October 16th. Were you aware of it at the time?

Mr. BANKS. Yes, sir, I certainly was aware of it. I thought it was earlier than that, but I was aware from what I had read in the paper that there was an issue of some controversy that had been injected into the Presidential campaign.

Senator SARBANES. That there had been an improper search of Mr. Clinton's passport records?

Mr. BANKS. At that time, I thought it certainly appeared to be improper. I didn't know anything about the facts or circumstances.

Senator SARBANES. That was the way the media was playing it at least.

Mr. BANKS. If you took the square root of what the media was saying, yeah, I took it as being improper.

Senator SARBANES. OK. Thank you very much.

The CHAIRMAN. I think Mr. Chertoff has several questions, then I would like to make an observation and I think we'll be finished with this panel.

Mr. Chertoff.

Mr. CHERTOFF. Very briefly, Mr. Irons, I want to come back to Mr. Ivey's point regarding your conversation with Cecelia Seay, and your having seen or heard Mr. Teckler's observations, your having complained to Ms. Seay, and then her response to you that the White House had somehow been involved in trying to change the characterization of this matter by the SBA.

At that period of time, were you aware that, a couple of weeks before your conversation with Ms. Seay—and I am basing this on the testimony of Mr. Bowles who was then the Administrator—Mr. Bowles had had a meeting with Mr. Teckler in which Mr. Teckler told him there was an indictment that was very shortly due against David Hale, and suggested that Mr. Bowles give a heads-up to the White House?

Mr. IRONS. No, sir. I believe I saw that—I watched television last week. I saw that testimony——

The CHAIRMAN. So you wrote this memorandum without the knowledge that Mr. Bowles was going to give a heads-up to the White House——

Mr. IRONS. That's correct.

The CHAIRMAN. —or Mr. Teckler?

Mr. IRONS. That's correct.

The CHAIRMAN. I want to make an observation, if I might, because we are well into this. I think that when an FBI agent, from his own memory and from his contemporaneous notes, indicates basically that he has been told that officials from the White House, possibly Mark Stephens, had urged the SBA to make such a characterization due to some news accounts that mentioned Whitewater Development, and the White House desire to avoid any inference of criminal activity in relation to Whitewater Development and Hale's company, that's pretty convincing, wouldn't you say, Mr. Banks? You know Mr. Irons. If he wrote that down in a memo, would you believe him?

Mr. BANKS. I have great respect for Mr. Irons——

The CHAIRMAN. Mr. Kendrick, would you believe him?

Mr. KENDRICK. If that's what Mr. Irons said——

The CHAIRMAN. Mr. Pettus——

Mr. PETTUS. Yes, sir.

The CHAIRMAN. —you've dealt with him?

Mr. Frazier, have you had occasion to deal with Mr. Irons?

Mr. FRAZIER. No, sir, I haven't.

The CHAIRMAN. Do you believe that an agent with his background would just make that up?

Mr. FRAZIER. No, sir.

The CHAIRMAN. Let me make another observation, if I might, so that we can stop this nonsense about whether he made it up and who believes that he did. So many people come before the Committee and we have their notes, and then they have no recollection.

Ms. Seay is only one of many.

Mr. Banks?

Mr. BANKS. Yes, sir.

The CHAIRMAN. I want to say to you that I think in terms of the action that you took in September or October, you did absolutely the right thing.

Mr. BANKS. Thank you sir.

The CHAIRMAN. We aren't going to convene a Grand Jury 3 weeks before an election.

Mr. BANKS. Thank you, sir.

The CHAIRMAN. I can understand when you become reluctant—charged with so many things that you begin to get gun shy after the election. I think that was the point that Mr. Chertoff was attempting to make because I believe you indicated that this case was meritorious and had some substance, but that you really weren't willing to undertake it at this time.

I agree because even a case that had some substance and would develop further—I think you put it: "Criminal allegations against Mr. and Mrs. McDougal and Ms. Anspaugh were meritorious, but the case was subject to declination due to a previous prosecution." So there was merit. I think you probably should have told your people to look into this matter since this campaign is over.

I'm not——

Mr. BANKS. Excuse me, sir. I was going to ask if I might respond to that?

The CHAIRMAN. Sure.

Mr. BANKS. I think it is important, Senator, to make the point that it seems to me, as U.S. Attorney, you are laboring under two oaths: Your oath to the Constitution as a U.S. Attorney, and your personal oath as a lawyer. It also seems to me that, if after the election, with the Department having received the very information I sent in and there being absolute silence coming back from the Department, and no one else, not the FBI nor the RTC, raised the issue again after the election, that for an outgoing U.S. Attorney, who was still pending as a Federal judge, that would appear to be conduct that would be improper.

The CHAIRMAN. Look, I am going to say——

Mr. BANKS. I'm certainly not arguing with you——

The CHAIRMAN. Sure. I am going to make a judgment on that. First, you did absolutely the right thing. You don't start a Grand Jury investigation as it relates to the then-Governor/Presidential candidate 3 weeks before—I mean, that is ridiculous and I think what you did was absolutely correct.

The fact is that afterwards the package seemed to have been mislaid and winds up in Mr. Frazier's possession, and he's not quite sure how it gets there, but it gets there.

Now, notwithstanding what everybody says about the possible motivations of the investigator Jean Lewis on this case, the fact is there was merit there. You found initial merit and it was enough

merit, enough proof, to bring cases that have already resulted in some people pleading guilty. Now, of course, the case will be held.

I think that every one of you did the job to the best of your ability. Under some very difficult situations and circumstances, at least you recalled what you did. You're not trying to place it on somebody else, you called it the way you saw it, you dealt with the facts as you had them, and I want to commend you all.

I want to thank you for coming in, and I want to thank you for testifying, not under the easiest of circumstances, and attempting to recall what took place 2 years ago or more, and I certainly would thank you for taking your time.

I know, Mr. Banks, you came back and forth here on a couple of occasions, and we certainly are sorry that we could not hear you earlier.

Mr. BANKS. Senator, I thank you, and I appreciate your indulgence in helping me try to meet this schedule for my client's sake.

The CHAIRMAN. Thank you.

Mr. Frazier, we wish you continued success.

Mr. FRAZIER. Thank you, Senator.

The CHAIRMAN. It seems to me you are a professional that really undertakes his job in the highest tradition. Mr. Kendrick, you as well. Mr. Pettus, you certainly undertook your job to the best of your ability. Mr. Irons, we certainly want to thank you for your cooperation, recognizing that there are certain limitations with respect to what matters that you could and could not testify on, but we thank you for having come forth.

Senator Sarbanes, do you have——

Senator SARBANES. Yes, Mr. Chairman. I would just like to make two observations and then a short statement.

First of all, in his letter of October 16th, Mr. Banks indicated that his evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. That was the statement—that was his evaluation.

It seems to me that you showed great strength and great sensitivity through this matter. Obviously, opening a file would have leaked to the press and would have been a major political thing. There was no urgency, although people were importuning you to do this, and you resisted that and stayed on the straight course.

Of course, afterwards, you are then dealing with a President-elect.

Mr. BANKS. Yes, sir.

Senator SARBANES. That is also, I think, as it was described earlier, a hot potato or something.

The CHAIRMAN. To say the least.

Senator SARBANES. Also in an evaluation in October in which you had said you didn't see it with respect to witnesses as opposed to McDougal and Anspaugh.

Now, I guess we will develop on tomorrow from the other Justice people where this matter was within the Justice Department. I take it it got sidetracked within the Justice Department, but you never heard back from them. Of course, then you left the office, when, in early 1993?

Mr. BANKS. Yes, sir, I gave notice of separation of service, I think, in the middle of January or the third week in January, effective March 1st, but that was my last date of service.

Senator SARBANES. I simply want to say that I think this letter and the positions you took reflected a determined effort to sustain the integrity of the criminal justice system. I think that ought to be recognized. I think it's this kind of courage that makes this system work, and I commend you for it.

Mr. BANKS. Thank you, sir.

The CHAIRMAN. We stand in recess. Again, all of the witnesses with the thanks of the Committee. We will reconvene at 10 a.m. tomorrow. Thank you.

[Whereupon, at 4:54 p.m., the hearing was adjourned, to reconvene at 10 a.m., on Wednesday, December 6, 1995.]

[Appendix supplied for the record follows:]

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
PHIL GRAMM, TEXAS
RICHARD C. SHELBY, ALABAMA
CHRISTOPHER S. BOND, MISSOURI
CONNIE MACK, FLORIDA
LAUCH FAIRCLOTH, NORTH CAROLINA
WYNDT F. BENNETT, UTAH
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PAUL S. SARBANES, MARYLAND
CHRISTOPHER J. DODD, CONNECTICUT
JOHN F. KERRY, MASSACHUSETTS
RICHARD H. BRYAN, NEVADA
BARBARA BOXER, CALIFORNIA
CAROL MOSELEY-BRAUN, ILLINOIS
PATTY MURRAY, WASHINGTON

HOWARD A. MENELL, STAFF DIRECTOR
ROBERT J. GIUFFRA, JR., CHIEF COUNSEL
PHILIP E. BECHTEL, DEPUTY STAFF DIRECTOR
STEVEN B. HARRIS, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL

United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

November 28, 1995

VIA FACSIMILIE AND MAIL

Jane C. Sherburne, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Dear Jane:

The Special Committee to Investigate Whitewater Development Corporation and Related Matters intends to question Mr. Kennedy about the meeting he attended at David Kendall's office on or about November 5, 1993. Please advise Mr. Kennedy as to any privilege the White House or President Clinton is claiming with regard to this meeting so that Mr. Kennedy will be prepared to answer the questions posed by the Committee.

Very truly yours,

Michael Chertoff
Special Counsel

cc: David Kendall, Esq.
(Williams & Connolly)

Paul Castellito, Esq.
(Sharp & Langford)

Richard Ben-Veniste, Esq.
Democratic Special Counsel

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN
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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

November 29, 1995

VIA FACSIMILIE AND MAIL

Jane C. Sherburne, Esq.
Special Counsel to the President
The White House
Washington, D.C. 20500

Dear Jane:

After we sent my letter today regarding the November 5, 1993 meeting at David Kendall's office, my attention was directed to a New York Post article dated today in which Special Associate Counsel Mark Fabiani described the purpose of the meeting and indicated "the White House is prepared to answer specific questions about what was discussed at the session."

Although this is a somewhat unusual way to waive an attorney-client privilege, if any, we appreciate the White House decision to answer these questions. Please communicate this decision to Mr. Kennedy and to any other participants to the meeting and confirm that you have done so.

In addition, in view of this waiver, kindly transmit to us this evening, the notes of Mr. Kennedy identified in the White House privilege log.

Very truly yours,

Michael Chertoff
Special Counsel

cc: David Kendall, Esq.
(Williams & Connolly)

Paul Castellito, Esq.
(Sharp & Langford)

Richard Ben-Veniste, Esq.
Democratic Special Counsel

THE WHITE HOUSE
WASHINGTON

November 29, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Dear Mike:

I received your letter tonight notifying us that you intend to question Mr. Kennedy during his appearance before the Special Committee tomorrow about the meeting he attended at David Kendall's office on November 5, 1993. During questioning yesterday of Mr. Lindsey about the same meeting, Chairman D'Amato asked that you undertake with Mr. Ben-Veniste to meet with White House representatives to discuss the Committee's interest in this meeting (and related notes taken by Mr. Kennedy). As I understood the Chairman's request and the subsequent colloquy with Senator Sarbanes, the aim of such a meeting would be to provide the Committee with a basis for assessing the merits of a claim of privilege and to determine whether there is a way for the Committee to obtain the information necessary to its inquiry without compromising appropriate claims of privilege.

We are prepared to meet with you at your convenience to discuss these matters. I believe it would be appropriate for David Kendall to participate in our discussions, as the meeting at issue involves his representation of the President and Mrs. Clinton in their personal capacities. Until these matters are resolved, we will advise Mr. Kennedy that he is free to answer the Committee's questions about the attributes of the meeting (who attended, its duration and purpose, how it came about, etc.).

We had no intention of leaving the impression with anyone, including the New York Post, that a decision had been made to waive privileges that attach to the November 5, 1993 meeting. We believe the procedure outlined by Chairman D'Amato and Senator Sarbanes yesterday is a sensible and appropriate way to proceed.

I look forward to hearing from you.

Sincerely yours,

Jane C. Sherburne
Special Counsel to the President

cc: Richard Ben-Veniste, Minority Special Counsel
David Kendall, Esq.
Paul Castellitto, Esq.

ALFONSE M. D'AMATO, NEW YORK, CHAIRMAN

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AND CHIEF COUNSEL

United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

December 4, 1995

BY FACSIMILE

Jane Sherburne, Esq.
Special Counsel to the President
The White House
Washington, DC 20500

Dear Jane:

As you know, the Special Committee to Investigate Whitewater Development Corporation and Related Matters attempted to question Mr. Bruce Lindsey on November 28, 1995, about a meeting he attended at David Kendall's office on or about November 5, 1993. Claiming attorney-client privilege, Mr. Lindsey refused to answer questions about the meeting except that it was a legal defense meeting concerning Whitewater Development Corporation. Mr. Lindsey refused even to identify the participants of the meeting, other than that they were all attorneys.

By letter to you dated November 28, 1995, Michael Chertoff advised that the Special Committee intends to question Mr. William Kennedy about the same meeting. Mr. Kennedy, through counsel, has advised the Special Committee that you have instructed him to assert the attorney-client privilege and not answer questions about the meeting.

I hereby advise you that, even if Mr. Kennedy asserts the attorney-client privilege, the Special Committee intends to ask Mr. Kennedy to identify: (i) the participants of the meeting on or about November 5, 1993, at the office of David Kendall; (ii) their official titles, if any, at the time of the meeting; (iii) the clients, if any, that each of the participants was representing at the meeting; and (iv) the bases for any possible assertion of privilege. This minimal information is necessary, indeed essential, for the Special Committee to exercise its sound discretion whether to accept a possible assertion of attorney-client or other non-constitutional privilege. See PROCEEDINGS AGAINST RALPH BERNSTEIN AND JOSEPH BERNSTEIN, H. Rep. No. 99-462, 99th Cong., 2d Sess. 12-15 (1986).

Mr. Kennedy is scheduled to testify before the Special Committee tomorrow, December 5, 1995, at 10:00 a.m., in the Senate Hart Building Room

216. In order to resolve the matter fully, I hereby invite you and any other attorneys representing any clients whose interests were implicated by the meeting on or about November 5, 1993, at the office of David Kendall to attend the Special Committee's public hearings.

Thank you for your cooperation.

Very truly yours,

Alfonse D'Amato

Alfonse M. D'Amato
Chairman

cc: Paul S. Sarbanes
Ranking Member

David Kendall, Esq.

Paul Castellito, Esq.

THE WHITE HOUSE
WASHINGTON

December 4, 1995

BY TELECOPY

Michael Chertoff, Special Counsel
United States Senate
Special Committee to Investigate Whitewater
Development Corporation and Related Matters
534 Dirksen Building
Washington, D.C. 20510-6075

Dear Mike:

I received the Chairman's letter late this evening, expressing an intention to question Mr. Kennedy about a meeting among lawyers for the President that took place at David Kendall's office on November 5, 1993. I was surprised that the Chairman's letter does not respond to my November 29 letter urging that we meet, as the Chairman suggested during the questioning of Mr. Lindsey, to explain the claims of privilege related to this meeting. We are puzzled by your apparent abandonment of the procedure agreed to by the Committee and hope that you have not chosen for political or tactical reasons to forego such an undertaking.

The White House remains willing to continue working with you, as we have throughout the Committee's investigation, to ensure the Committee's appropriate access to information. As I indicated earlier, because this particular meeting involves the representation of the Clintons by their private counsel, and certain of the claims of privilege relate to that representation, it is necessary to include Mr. Kendall in any discussion about the November 5 meeting. Mr. Kendall is not available on this notice to attend the public hearing tomorrow.

Mr. Kennedy, in the meanwhile, has been instructed by the White House and by Mr. Kendall that he may answer questions about the attributes of the meeting, which establish the basis for the privilege claim (who attended, its duration and purpose, how it came about, etc.), but not the substance of the meeting.

Mr. Kendall and I are prepared to discuss these matters with you as soon as we can schedule a meeting. At that time, I also would like to discuss the other requests in Bob Giuffra's letter of November 27. I look forward to hearing from you.

Sincerely yours,

Jane C. Sherburne
Special Counsel to the President

cc: Richard Ben-Veniste, Minority Special Counsel
David E. Kendall, Esq.
Paul V. Castellitto, Esq.

Hunt ordered him to go after Sawyer + 1st federal grant.

1. Walton Liberal, set it, asked who JGT matters were
Newspaping article - JC later said would AEC wanted them to take over
Jim L called: had a bill but we already had one + Mathias closed file
Jim L out + GH, GH said someone re WDC + you/Stafford on, GH retired asking
I called clerk + said if anyone may was looking at MG, yes, we have big money involved type - and it look like there would be a referral - yes - then there must be something you think - they are both fold

ASAC, SAC, Cinn

3 marks
GH came to us - 2d third key.

JC called - just about ready. She has a deadline of 8/31, knew up a good opportunity in D.C. just to do referral, would she or if could wait
hiring - very dramatic.

ASAC
Several calls around 8/31 re getting it, finally did.
KW + GH to office to complain about cases - had heard from USA's
Dutton

SAC, Cinn, 1 SAC
Buffalo
Phone calls from Lewis wanting to know
JC came to see small, then WC, GH + Judy - 1st assumed asked us re meeting - OK talking to GH, afternoon OK with JC + to ask again. Said to have calling him every other day asking what we were doing, what? wanted to know. The referral went all the up to the line before approval, D.C. had to do. Told her JC + ASA we could not tell her. She volunteered to answer questions, etc.

1C, 2, 3, 4 USA + MAC 8/23

OIC 001124

Memorandum

To : SAC, LITTLE ROCK (86A-LR-34847) Date 10/1/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
ET AL;
FAG-SBA
OO: LITTLE ROCK

On 9/28/93, writer had a telephonic conversation with CECILIA SEAY, attorney for the Small Business Administration (SBA) in the matter involving DAVID HALE. SEAY advised she was still attempting to obtain all of the records of HALE's SBA company and needed a list from the FBI of what was missing from the records SBA turned over to the Bureau. SEAY intends to interview or depose HALE, and continue to demand all records.

Writer mentioned the media reports of SBA spokesman TECHLER's comments concerning the case and noted TECHLER was not helping matters by stating certain activities were not criminal in nature when he did not have all of the facts. SEAY advised she had spoken to SBA in Washington (possibly MARK STEVENS), and understood officials from the WHITE HOUSE had urged SBA to make such a characterization due to the mention of WHITEWATER DEVELOPMENT in some news accounts and WHITE HOUSE desire to avoid any inference criminal activity could have occurred in relation to WHITEWATER DEVELOPMENT and HALE's company.

OIC 001030

SDI/sdi
(2)

1*

86A LR 34847-100
SEARCHED INDEXED
SERIALIZED FILED
OCT 0 1993
FBI — LITTLE ROCK

Nods when ghost exits

BK → BN on

BK → No mtg. s/b held - very little we can do

RC: → I think it awkward → multiple pending parties → run the maps - see where everybody's thinking

I represent David Hale - SBK - Capital Mgt. Services

I would also suggest down + suggest records. Invest involves propriety of loans made by SBIC.

"Quite deliberately — I am informed there are some loan transactions that relate to Madison Guarantee → Your LS name has popped up → both of them Whitewater Develop. Corp

"They are not stopping at us, I can guarantee you that"

South Loop.
Kristi.
Water Disinc. -JIM Guy TUCKER

Talking about an initial indictment 9/21

Take out loans from this SBIC taken to salvage some situations that existed w/ Madison for these entities

These are not Kistler loans.

OK - You mean Madison may have parked bad loans w/ Dixie?

RC" Yeap. I'm sur" . . . The Madison deal is coming back to life.

WHITEWATER

BK/ David Hale's name all the way?

S 007956

BK: LIBONYCTA, what do you anticipate Bucidis going to be charged w/?

RC: 18 USC § 371 → regulatory fraud

They have got records.

They're going to have start trying talking plea. Just trying to touch base w/ as many folks as possible

BK: I appreciate the heads-up. I would have thought the statute would have run on those trial old

RC: They got a 10 year on one, and a 5 on three

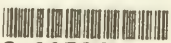
BK: Let's [illegible] [illegible]

bottom line: [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

RC: Just wanted to let you know if you hear anything up your way, let me know.

BK: Not a suit-settle arrangement w/ Fabisch - huh?

RC: No.



MEMORANDUM

TO: William H. Kennedy

FROM: Sue Cathey-Jones

DATE: May 31, 1991

RE: **Whitewater Development Company Inc. ("Whitewater")**

==========

I spoke with Ron Proctor at Ozark National Bank ("Ozark") yesterday regarding the status of the Whitewater Development Company loan from Ozark, which is guaranteed individually by Bill Clinton and Hillary Clinton. Mr. Proctor indicated the balance of the loan is approximately $13,000. I have located a copy of the note in Ms. Clinton's files. The terms of the note are as follows:

Date:	July 15, 1988
Maturity Date:	November 2, 1991
Original Loan Amount:	$36,333.66
Purpose:	Renewal of loan number 5885 for original purchase and development of subdivision by Whitewater.
Monthly Payments:	$1,143.00
Security:	Existing mortgage dated August 2, 1978, and assignment of escrow funds on sold lots, which total $1,338.43 per month.

Mr. Proctor indicated that about two years, Jim McDougal and Chris Wade met with him at the bank and indicated that Chris Wade had purchased part of the property from Whitewater and that Chris Wade would be responsible for paying the remainder of the loan. I do not know what type of documentation, if any, was delivered to the bank at that point, but I will find out. The note continued to be paid down monthly from moneys in the Whitewater receivables account at Ozark. In February of this year, Wade and McDougal requested a deferral of the monthly payments on the loan until April, and the bank granted the extension. Mr. Proctor checked the Whitewater receivable account yesterday and said the current balance is $6.00. Mr. Proctor is

3 months

trying to track down where all the receivables are currently being paid. First Ozark Bank is escrow agent for some of these accounts. Mr. Wade has indicated to Mr. Proctor that he is now responsible for the note, but he does not want to make payments currently because he has recently filed bankruptcy.

As we discussed, Mr. Proctor will have title searches performed on the property, which will cost approximately $200. I have made arrangements to meet with Mr. Proctor at 11:00 on Tuesday to find out more specifics on the note and the escrow accounts set up for the lots being paid out over time. I will also continue to try to get in touch with Chris or Rosalee Wade, so that I may also meet with them on Tuesday.

If you have any questions or advice, please call.

SCJ:lr

Kennedy

MEMORANDUM

CONFIDENTIAL

To: Bill Kennedy

From: Rick Massey

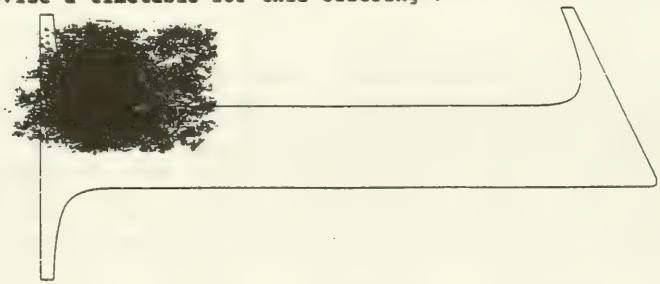
Re: Madison Guaranty Offering of Units of Limited Partnership Interests

Date: September 6, 1985

As I have described to you earlier, Madison Guaranty, through its wholly owned service corporation, Madison Financial Corporation, intends to offer units of limited partnership interests in a limited partnership which will own or lease certain commercial realty located on Main Street, Little Rock

Madison proposes to commence such offering during the month of October, 1985 and I have begun the preparation of the offering materials. There are, however, some fundamental questions as to the structure of this offering which, of course, must be answered. Madison has never done an offering of this sort and will require a good deal of advice respecting such structure.

If you are still interested in working on this offering, could you and I meet with Madison personnel during the week of September 9 through 13 to discuss the open structural issues and devise a timetable for this offering ?



RS 000397

A No.

Q So, is my understanding correct then that you would wait for a referral to come in from one of the agencies before you would take investigative or prosecutive action in your office?

A Yes. That is generally correct. There would be times that maybe we would – people would call us about criminal activity, not knowing who to

Page 56

call, they would call us instead of some agency. In those instances, I would contact the appropriate agency. But I don't recall that ever happening with RTC.

Q Were there any criteria or guidelines that your office followed or that the FBI office in Little Rock followed of which you are aware for determining what failed savings and loans should be investigated, informal or formal?

A I don't think our office developed those guidelines. I do think that they concentrated on the savings and loans that lost the most money. I don't know how they came up – I think Madison was the first referral we got.

You have to understand these referrals came in before I got there. But I believe Madison is one of the first ones because McDougal is the first savings and loan person we tried. First South was the next group of referrals we got, and we prosecuted several people in that institution. So that came in second.

I don't know why they chose those. Maybe

Page 57

there was no obvious criminal activity there. I have no idea.

I don't think those referrals came from RTC. I think they may have come from – well, it wouldn't have been the RTC then. It would have been the FDIC maybe or the –

Q FSLIC?

A Yes.

Q Do you recall, order of magnitude, the losses associated with First South and Pine Bluff?

A It was 50 or $60 million, I think, of criminal activity, what we felt was criminal activity.

MR. COLE: Off the record.

(Discussion off the record.)

BY MR. COLE:

Q If I could rephrase my question, I was not asking the magnitude of the criminal activity that was prosecuted but the losses to the government of the thrift insurance fund, whether RTC or FDIC, associated with the failure of the institution or order of magnitude for First South.

Page 58

A I don't remember the exact order of

A Yes.

Q The same question for Saver Savings and First Federal."

A I don't know. I really don't. I never worked on those referrals. I just don't know.

Q Do you know if it was more or less than associated with Madison Guaranty?

A I think Madison was a smaller savings and loan, one of the smaller ones. I am answering that in terms of the total loss to the government. I don't think it was smaller in terms of criminal activity, but it was smaller in total dollars lost.

Q Do you know whether the RTC in fact conducted any investigation with regard to Saver Savings or First Federal?

A I don't know. I haven't seen any indictments since I have been gone.

Q Focusing on the time period in which you were in the U.S. Attorney's Office in Little Rock,

Page 59

are you aware of any request from the FBI to the RTC to investigate those institutions?

A I don't know of any. I may be telling you – there was one person we indicted, but I don't think it was a Little Rock savings and loan. I don't recall the name of it. It was possible it was one of those institutions. But I really think it was a smaller institution outside of Little Rock.

Q Do you have any knowledge of how the RTC internally determined which failed savings and loans would be the subject of criminal investigation?

A I have no idea.

Q I believe you testified earlier that you personally did not do what I would call a substantive review of the 1992 criminal referral, and by that I particularly mean reviewing the documents and exhibits that were attached.

A That's correct.

Q If I understand your testimony correctly, you believe Mr. Banks did at least to some extent perform such a review?

A I believe he did.

Page 60

Q Was he assisted by Ms. Cherry in that review or was her analysis a separate analysis for purposes of determining whether there was overlap?

A Her analysis was separate. It was not at the same time. I don't know if anyone helped Chuck with that review. Maybe a law clerk or something. But I don't really think any of the other attorneys helped him on that.

Q Focusing on the review that Mr. Banks conducted, what do you recall that he concluded from his review?

A I think his letter spells that out, that he – whatever the letter says. He didn't think there was a case against the witnesses and that

DODSON

United States Attorney

Eastern District of Arkansas

Post Office Box 1229

Little Rock, Arkansas 72203

October 16, 1992
(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an intestigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

29-0-4956

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

FBI-00001000

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoena for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

Charles A. Banks

CHARLES A. BANKS
United States Attorney

CAB:bw

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

February 18, 1993

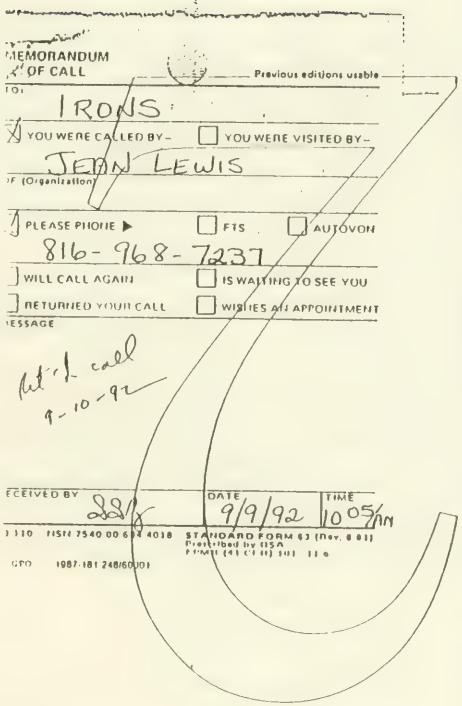
MEMORANDUM TO: John C. Keeney
Acting Assistant Attorney General

FROM: Douglas N. Frazier
Associate Deputy Attorney General

RE: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral

The attached recusal package is forwarded for your review and recommendation. Thanks.

Attachment



MEMORANDUM
OF CALL

Previous editions usable

TO: IRONS

☒ YOU WERE CALLED BY- ☐ YOU WERE VISITED BY-

JEAN LEWIS

OF (Organization)

☒ PLEASE PHONE ▶ ☐ FTS ☐ AUTOVON

816-968-7237

☐ WILL CALL AGAIN ☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL ☐ WISHES AN APPOINTMENT

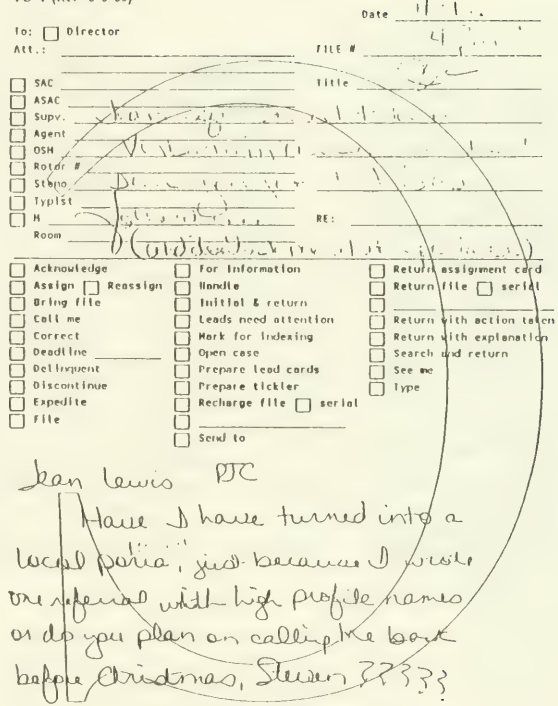
MESSAGE

Ret'd call
9-10-92

RECEIVED BY 2BX DATE 9/9/92 TIME 1005 AM

7540-00-634-4038 STANDARD FORM 63 (Rev. 8-81)
Prescribed by GSA
FPMR (41 CFR) 101-11.6

GPO 1987-181-248/60001



Routing Slip
FD-4 (Rev 8-8-89)

Date 11-1-..

to: ☐ Director
Att.: FILE #

☐ SAC
☐ ASAC
☐ Supv.
☐ Agent
☐ OSH
☐ Rotor #
☐ Steno
☐ Typist
☐ H
Room

Title
RE:

☐ Acknowledge
☐ Assign ☐ Reassign
☐ Bring file
☐ Call me
☐ Correct
☐ Deadline
☐ Delinquent
☐ Discontinue
☐ Expedite
☐ File

☐ For information
☐ Handle
☐ Initial & return
☐ Leads need attention
☐ Mark for indexing
☐ Open case
☐ Prepare lead cards
☐ Prepare tickler
☐ Recharge file ☐ serial
☐
☐ Send to

☐ Return assignment card
☐ Return file ☐ serial
☐
☐ Return with action taken
☐ Return with explanation
☐ Search and return
☐ See me
☐ Type

Jean Lewis FBI

Have I have turned into a local police, just because I work one referral with high profile names or do you plan on calling me back before Christmas, Steven ????

(816) 968-7237

☐ See reverse side Office

OIC 001123

1011

Around 8/31	FBI talked to LEWIS, who advised she was almost done and would overnight the package when complete.
9/2/92	Referral received from RTC. USA received his copy same date.
Next day or so	Spoke to USA who wanted us to take no action until we had time to discuss it due to sensitivity. (Previous conversations that it was coming had occurred)
Next few days	RTC began to call and ask what FBI was doing with the referral.
9/9/92	RTC leaves phone message complaining FBI return calls and give status report.
9/10/92	RTC was advised no decision by USA and FBI was not going to be in a position to give status reports when he did.
9/18/92	Lewis of RTC meets with SAs and AUSAs on another case. Prior to she asked me what status of MADISON was. Told her not decided, but meeting was scheduled with USA.
	After her meeting she waited for me. She again asked for status and was told she would have to ask USA. She advised her boss, Richard Iorric, kept asking her to try to find out what we were doing. I reminded her of sensitivity and that, even if USA decided to go forward, these cases took longer than a month to determine what was there. She advised everyone above her in RTC was aware of referral and it was approved at Washington before going out. She apologized for asking repeatedly but said her superiors kept telling her to find out what we were doing, what we were doing with the case. She was any communication would have to come from the USA and FBI would not even tell her when the meeting to discuss it took place, much less the outcome. Told her to deal directly with USA and cut FBI out. Also observed she and RTC had no reason or need to know. She offerred assistance if needed.
9/23/92	FBI and USA meet, no action taken pending further review by USA.

FBI-00001527

10/6/92	First Assistant USA advises they are going notify DOJ they received referral. Also

IME 496

advised JEAN LEWIS of RIC now calling him. She called and said she didn't mean to pester him but it was standard to make a followup contact six weeks after any referral to make sure it was received and find out if any clarification or assistance was needed.



FBI-00001528

TME 497

FD-36 (Rev 11-17-88)

-FBI [illegible]

TRANSMIT VIA:
- ☐ Teletype
- ☐ Facsimile
- ☒ AIRTEL

PRECEDENCE:
- ☐ Immediate
- ☐ Priority
- ☐ Routine

CLASSIFICATION:
- ☐ TOP SECRET
- ☐ SECRET
- ☐ CONFIDENTIAL
- ☐ UNCLAS E F T O
- ☐ UNCLAS

Date 8/26/92

TO : DIRECTOR, FBI

FROM : SAC, LITTLE ROCK (29D-LR-32896) (SQ 3)

SUBJECT : FINANCIAL INSTITUTION FRAUD AND FAILURE MATTERS; FINANCIAL INSTITUTION REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 (FIRREA) AND CRIME CONTROL ACT OF 1990 (CCA) RESOURCES

Reference airtel from Director dated 8/7/92 captioned as above.

1.

The Little Rock Division has under-utilized Financial Institution Failure (FIF) resources during the past fiscal year due to several reasons. Since 10/1/91, Little Rock has received one FIF referral from the Resolution Trust Corporation (RTC). RTC has control of a dozen failed Arkansas institutions for which referrals have not been received. None of failures occurred during the first nine months of Fiscal Year (FY) 1992. As a result of budget cutbacks, the RTC office in Tulsa, Oklahoma, began to scale down its operations in late 1991 to early 1992, and the office was closed in early summer of 1992. RTC had previously projected maxing referrals on the dozen failed institutions over a two year period to end in 1994. At the request of Little Rock, RTC intended to address the institutions in the order chosen by the Bureau. The order requested from RTC was derived by projecting manpower availability in headquarters and resident agencies. The closing of the Tulsa RTC office, layoffs of some of its personnel and transfer of the remaining employees have all negatively affected timely receipt of new referrals and adversely influenced Little Rock's ability to fully utilize its dedicated FIF resources during the past nine months.

29D-LR-32896-1

2 - Bureau
2 - Little Rock
SDI/sdi
(4)

Searched
Serialized
Indexed
Filed

FBI-00001529

Approved:

JME-00000498

29D-LR-32896

Contact was made with RTC investigator JEAN LEWIS on 8/26/92 to determine the schedule for pending referrals. LEWIS advised she would be providing a referral on MADISON GUARANTY on or about 8/31/92. Although a previous investigation has been conducted and convictions of institution officials obtained, LEWIS advised the referral would contain previously unknown and unaddressed allegations of wrongdoing. Specifically, she advised her investigation had revealed what she described as nine "shell corporations" with accounts at MADISON GUARANTY. LEWIS advised there appeared to be check kiting activity between the accounts, and that a corporation known as WHITEWATER DEVELOPMENT was involved as a recipient of some of the funds. WHITEWATER DEVELOPMENT was owned by JAMES and SUSAN MC DOUGAL (50%) and BILL and HILLARY CLINTON (50%). JAMES MC DOUGAL was part owner of MADISON GUARANTY and was previously indicted on fraud charges but acquitted after jury trial. BILL CLINTON is Governor of Arkansas and the Democratic nominee for President. Other individuals alleged to be associated with the alleged "shell corporations" include current Arkansas Lieutenant Governor JIM GUY TUCKER, MAURICE SMITH, STEVE SMITH, and R. D. RANDOLPH. Upon receipt of the referral, evaluation of possible criminal activity and identification of subjects will be accomplished on an expeditious basis. If warranted, an investigation will be conducted and the FIF burn will increase.

In addition, LEWIS was asked when referrals on other institutions could be expected and advised a referral would be provided within several months on SAVERS FEDERAL SAVINGS, which is expected to contain numerous allegations of significant criminal activity. This will also increase the burn rate for FIF agents. The two referrals, if determined to be worthy of investigation by the United States Attorney, in large part should resolve the under-utilization of FIF resources in Little Rock. It appears reasonable to project that, since personnel movements within the RTC region covering Little Rock have abated somewhat, the referral process may show some signs of increased activity.

However, an Assistant United States Attorney from the Eastern District of Arkansas recently attended the Department of Justice FIF Supervisors' Conference in Chicago, Illinois. While there, the panel commented as to how the RTC is pursuing civil recoveries under Directors and Officers insurance policies or lawsuits and is less interested in making criminal referrals until their civil efforts are complete.

Murray Coleman | SOI 524-1167 | 8/17;

→ David Hall — SBIC — Capital Venture Fund

Investigation → 2 years ago

FBI — original records - 2 years ago

- Nature of investigation — Propriety of loans made past few years

- Proposed Fair and Loan Practices Act - which to Banking Committee

All records liquidation of SBIC → Parts of same were consigned up

- Whitewater Development Corp.: Not registered w/ David Hall

Extortion: Both long Conn. County work:

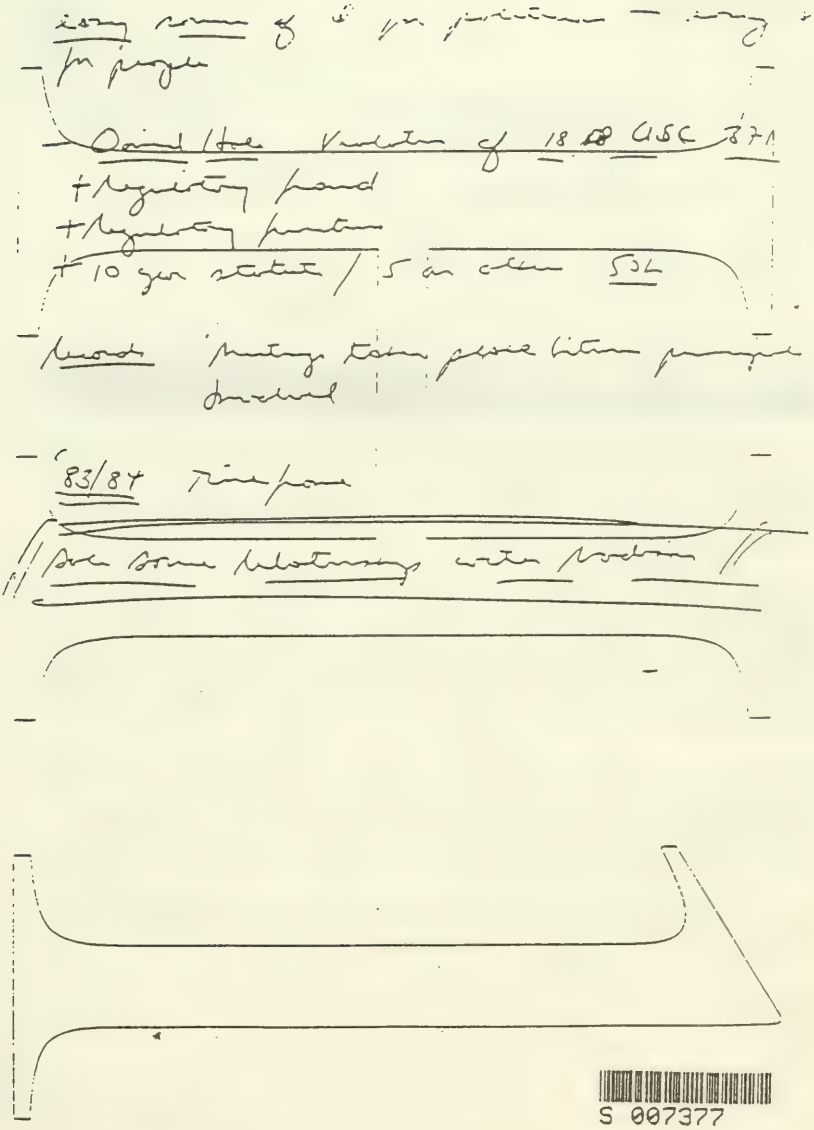
Indictment of Justice Department

Threat loans from SBIC SBIC Assorgo notation associated w/ conviction

Any loan granted Bank Loans with David Hall knowledge

S 007376

Madison Guar



S 007377

Memorandum

To : SAC, LITTLE ROCK (29-0) Date 11/10/92

From : SSA STEVEN D. IRONS

Subject: FINANCIAL INSTITUTION FRAUD (FIF) MATTERS

On 10/23/92, PAT ROBISON, Department Head, Civil Department, Resolution Trust Corporation (RTC), Kansas City, Missouri, telephonically contacted the writer to discuss the location of certain records [redacted]

After answering ROBISON's question, the schedule for future referrals was discussed. ROBISON advised his department examines the records of the assets of failed savings and loan associations under RTC control for possible civil recovery. At the conclusion of that process, the findings are referred to the criminal department of RTC for eventual referral to the Bureau.

He further advised the RTC employee handling the civil examinations for Arkansas savings and loans under RTC control is CARLEEN RYAN, telephone 1-800-365-3342. The criminal department employee is JEAN LEWIS. Information concerning SAVERS SAVINGS ASSOCIATION and FIRST SAVINGS OF ARKANSAS is currently under review by the ROSE LAW FIRM in Little Rock, as well as one other firm. ROBISON expected a referral on SAVERS SAVINGS ASSOCIATION to be provided to Little Rock within the next 60-90 days.

On 11/9/92, JEAN LEWIS, RTC, telephonically contacted the writer. LEWIS inquired again about the status of a letter from Assistant United States Attorney (AUSA) MAC DODSON confirming receipt of a referral concerning MADISON GUARANTY. After discussion, she decided to wait several more days for the letter before asking the writer to contact DODSON on her behalf.

LEWIS further advised she would send three referrals to Little Rock before 12/31/92, and that referrals could be expected on SAVERS, FIRST SAVINGS, and ARKANSAS FEDERAL.

SDI/sdi
(2)

OIC 001050

1*

AGENT COPY

11-9-92

10:52 Am – re letter on Machine
Just ~~sent~~ ~~Tribal~~ Gen Davis, RTC

2 or three referalls re Savers, Fed, & Ark Fed
by Dec 31.

make a crack about "Democrat" replacement
for banks may not be as good

told her I didn't believe any ~~of~~ solutions
~~were~~ except Int, Gen, Savs, Ltd,
still under review.

OIC 001132

Memorandum

To SAC, LITTLE ROCK (29-0) Date 1/6/93

From SSA STEVEN D. IRONS

Subject: FINANCIAL INSTITUTION FRAUD
RESOLUTION TRUST CORPORATION
CRIMINAL REFERRALS

On 1/6/93, writer telephonically spoke to JEAN LEWIS, Investigator, Resolution Trust Corporation (RTC), concerning the timetable for the receipt of criminal referrals from RTC for Savers Savings Association and First Savings. LEWIS advised the first of several expected referrals was approximately 120 days from completion. She advised she would submit them incrementally to allow the Bureau to begin work as soon as possible.

LEWIS also advised RTC had received a Freedom of Information request from the Arkansas Times newspaper for information concerning Arkansas Governor JIM GUY TUCKER. She advised the information possessed included that furnished to the Bureau and the United States Attorney, Eastern District of Arkansas, in a previous criminal referral. LEWIS notified that office and is waiting on a reply as to whether releasing the information would damage present or anticipated investigation. The writer advised LEWIS to continue to seek guidance from the United States Attorney's office in that matter.

SDI/sdi
(1)

1*

RTC
RESOLUTION TRUST CORPORATION
Resolving The Crisis
Restoring The Confidence

March 26, 1993

Mr. Ian DeWaal, Trial Attorney
Department of Justice, Criminal Division
Dallas Bank Fraud Task Force
7710 N. Stemmons, Suite 200
Dallas, Texas 75247

Re: #2109 Savers Federal Savings & Loan
Little Rock, Arkansas - In Receivership
INTERVIEW AND COOPERATION OF R. FOY PHILLIPS

Dear Mr. DeWaal:

On or about March 8, 1993, R. Foy Phillips contacted the Criminal Investigations section of the Resolution Trust Corporation's ("RTC") Kansas City Office of Investigations. At that time, Mr. Phillips offered his cooperation to both the Criminal Investigator and RTC Counsel handling the respective pending criminal investigation and civil litigation regarding Savers Federal Savings & Loan of Little Rock, Arkansas.

On March 17, 18 and 19, Mr. Phillips met with both myself and RTC Senior Attorney Neysa Day to provide information regarding the above captioned failed thrift. Ms. Day and I both found the commentary and documentation provided by Mr. Phillips to be informative and useful. At this point, Ms. Day plans to have RTC retained counsel meet with Mr. Phillips in the near future, and I plan to request additional documents from his records in support of potential criminal referrals, at a later date.

Addressing specifically the criminal investigative side, the nature of the information offered by Mr. Phillips was of very significant interest, and is expected to provide the basis for criminal referrals which will be submitted to the U. S. Attorney's Office in the Eastern District of Arkansas.

Should you have any further questions or require additional information regarding Mr. Phillips level of cooperation with this office, please do not hesitate to contact either myself or Neysa Day at (816) 531-2212.

Very truly yours,

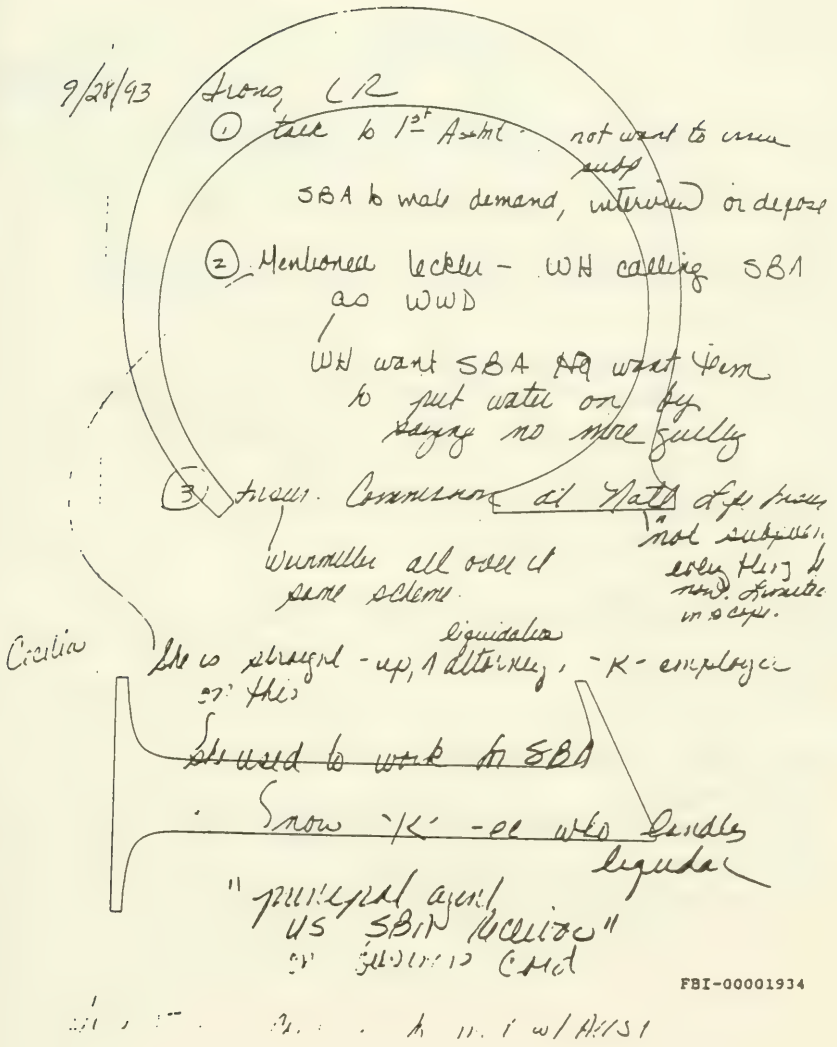
L. Jean Lewis
Criminal Investigator

Neysa L. Day
Senior Attorney

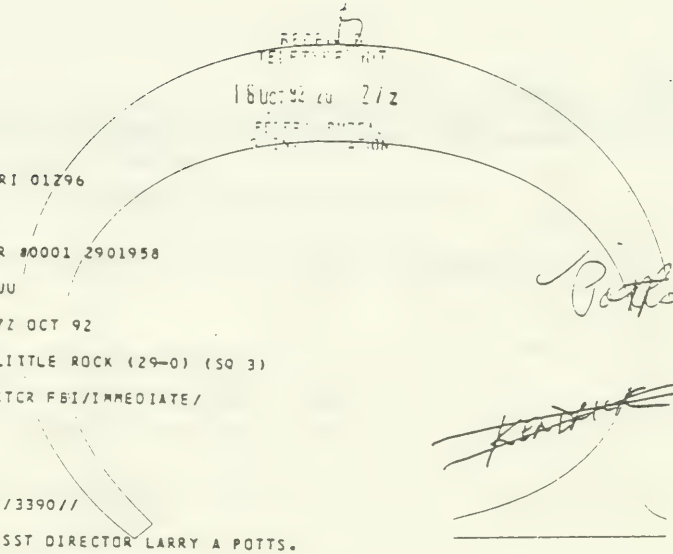
cc: Mr. Michael P. Carnes
Attorney-at-Law
Suite 3601, Nationsbank Plaza
901 Main Street
Dallas, Texas 75202

Mr. R. Foy Phillips
5603 Tatteridge Drive
Houston, Texas 77069

L. Richard Iorio, Field Investigations Office/KCO
Lee Ausen, Department Head/Investigations/KCO



FBI-00001934



0034 MRI 01Z96

OO P12

DE FBILR #0001 2901958

ZNR UUUUU

O 161957Z OCT 92

FM FBI LITTLE ROCK (29-0) (SQ 3)

TO DIRECTOR FBI/IMMEDIATE/

BT

UNCLAS

CITE: //3390//

PASS: ASST DIRECTOR LARRY A POTTS.

SUBJECT: JAMES B. MC DOUGAL; ET AL; UNSUB(S); MADISON GUARANTY SAVINGS AND LOAN, LITTLE ROCK, ARKANSAS; FIF;

CO: LITTLE ROCK.

RE TELETYPE FROM DIRECTOR TO LITTLE ROCK, OCTOBER 9, 1992, CAPTIONED AS ABOVE AND TELCAL FROM SAC, LITTLE ROCK, TO FBIHQ, OCTOBER 9, 1992.

29A-LR-2454-2

AS DISCUSSED IN REFERENCED TELCAL, LITTLE ROCK WILL NOT INITIATE AN INVESTIGATION OF CAPTIONED MATTER.

DURING THE PERIOD OCTOBER 9-16, 1992, UNITED STATES

PAGE TWO DE FBILR 0001 UNCLAS

ATTORNEY (USA), EASTERN DISTRICT OF ARKANSAS (EDA) AND WHITE-COLLAR CRIME SUPERVISOR AND FINANCIAL ANALYST, FBI, LITTLE ROCK, CONDUCTED AN EXTENSIVE REVIEW OF THE REFERRAL AND ALL OF THE APPROXIMATELY 300 EXHIBITS FURNISHED TO USA BY RESOLUTION TRUST CORPORATION (RTC). USA CONCURS THERE IS ABSOLUTELY NO FACTUAL BASIS TO SUGGEST CRIMINAL ACTIVITY ON THE PART OF ANY OF THE INDIVIDUALS LISTED AS WITNESSES IN THE REFERRAL. USA FEELS THE LIMITED DATA FURNISHED MAY INDICATE CRIMINAL ACTIVITY ON THE PART OF CAPTIONED SUBJECTS, JAMES AND SUSAN MC DOUGAL, AND LISA ANSPAUGH. HOWEVER, USA IS HOLDING PROVISION OF A PROSECUTIVE OPINION REGARDING THOSE SUBJECTS IN ABEYANCE.

AS DISCUSSED IN PREVIOUS COMMUNICATIONS, JAMES MC DOUGAL WAS PREVIOUSLY INDICTED FOR FRAUD RELATED TO THE FAILURE OF MADISON GUARANTY SAVINGS AND LOAN AND ACQUITTED BY JURY. HE CURRENTLY HAS NO ASSETS TO PURSUE, IS DRAWING DISABILITY INCOME AND IS BELIEVED TO RESIDE IN A TRAILER OWNED BY A FRIEND. WHILE THE AVAILABLE FACTS INDICATE ELEMENTS OF ONE OR MORE FEDERAL VIOLATIONS MAY EXIST, USA IS CONSIDERING THE LIKELIHOOD OF PROVING SUCH VIOLATIONS AND THE MANPOWER OPPORTUNITY COST TO OTHER PRIORITY INVESTIGATIONS OF PURSUING

Memorandum

To : SAC, LITTLE ROCK (86A-LR-34847) Date 10/1/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
ETAL
FAG-SBA
OO: LITTLE ROCK

On 9/24/93, a meeting was held to discuss captioned matter at the United States Attorney's Office (USAO), Eastern District of Arkansas (EDAR). Present from the USAO were United States Attorney (USA) PAULA CASEY, Assistant United States Attorney (AUSA) MICHAEL JOHNSON, Chief of the Criminal Section, and AUSA FLETCHER JACKSON. Present from the Bureau were ASAC WHITEHEAD, SA REIGN, FA HALL, and writer.

The meeting was held to accomplish two objectives. The USA wanted to determine if she would have to recuse herself from the matter due to her close friendship with JIM GUY TUCKER, SETH WARD, and STEPHEN SMITH. The Bureau wanted to voice its objection to the manner in which AUSA JACKSON was limiting its investigative efforts, conducting investigation on his own, and to press for all documents of Madison Guaranty Savings and Loan (MGSL) to be obtained from the Resolution Trust Corporation (RTC).

After hearing the estimation of both writer and AUSA JACKSON on the involvement of TUCKER, WARD, and SMITH, USA CASEY advised she would have to recuse herself and only had to decide the best time to do so. She referenced claims made by subject DAVID HALE in media outlets that she was being unfair due to her political or other affiliations. While she resented those accusations and realized recusing herself might be misinterpreted by some as giving merit to HALE's accusations, CASEY felt she must not hear any details concerning the above individuals. However, she saw no immediate need to publicly advise of her recusal and preferred to wait until a more opportune time from a public relations standpoint. AUSA JOHNSON also discussed the possibility the Department of Justice would take all or part of the case due to the mention of BILL CLINTON by HALE.

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Writer recounted past experiences with the RTC which lead him to place very little trust in its ability and motivation, especially in captioned matter. He also pressed for support for obtaining all MGSL documents, beginning with the microfilm and microfiche. Due to the promise RTC made to AUSA JACKSON to provide its MGSL referral by 9/30/93, the USAO felt it was desirable to wait until at least then to decide whether to force the issue of compliance of a grand jury subpoena for the film/fiche. The advantages of having all of the records was reviewed with the USAO, and the present problems being caused by AUSA JACKSON limiting what was taken in the search warrant at HALE's business were noted as an example of a disadvantage. The poor job AUSA JACKSON was doing of drafting subpoenas and keeping a record of his own investigative efforts was also mentioned, as well as his failure to keep the case agent adequately informed of the results of that investigation.

After those items had been covered, USA CASEY excused herself to allow SA REIGN, FA HALL, and AUSA JACKSON brief him on the specifics of the MGSL matter and possible involvement of TUCKER, WARD, and SMITH. ASAC WHITEHEAD and writer also excused themselves from the meeting.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

WEDNESDAY, DECEMBER 6, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:20 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

Before I swear in the witnesses, I would like to make some announcements as they relate to the business schedule of the Committee. In order to accommodate witnesses that have previously been scheduled, we were hoping to bring in witnesses tomorrow, but their schedules would not permit that. We have moved those hearings, in order to accommodate their schedules, to Monday. We will be having testimony from Maggie Williams, Mr. Barnett, Mr. Barlow, Ms. Thomases, and Mrs. Blair. They'll be scheduled to testify on Monday, and again, this was at the request of a number of the witnesses. Their schedules could not accommodate tomorrow. So we have agreed to put them over to Monday at 11 a.m.

Yesterday, a question of who could assert privilege was raised with respect to the meeting that took place on November 5th. Counsels for the Committee, I understand, met with White House Counsel and the Clintons' private attorney, Mr. Kendall, concerning—I don't know whether they actually met or whether they spoke—Committee's request to obtain evidence from Mr. Kennedy and Mr. Lindsey relating to the November 5th meeting.

Counsel has informed me that the White House insists and maintains its claim that this meeting was covered by the attorney-client privilege. So they persist in claiming that. Mr. Kennedy, in addition, has notes relating to that November 5th meeting which are in the possession of the White House and Mr. Kennedy. The Committee has subpoenaed these notes from the White House, and the White House has refused to produce these notes based on their claim of attorney-client privilege.

I believe that since we're unable to get these documents from the White House at this time, it is necessary to enforce that, that's an

option. But I certainly believe that we should move forward and subpoena Mr. Kennedy's notes. I don't understand how conceivably legally he could sustain that argument. It may be that we'll wind up in court if he continues, but we can't even move that forward unless we issue those subpoenas.

It is my intent to have Counsels discuss this, and I will discuss this with my friend and colleague, Senator Sarbanes. But my intent is to issue subpoenas for those documents that are in Mr. Kennedy's possession. I'm not going to move it now. I'm going to swear in the witnesses and proceed, but I'm laying this out and I'm going to let Counsel discuss the details before we undertake that action. But that is where I'm heading at this point in time, and a number of my colleagues feel very, very strongly about that. So I will discuss that with Senator Sarbanes and Counsel will discuss that, and if we can come to an agreement as we have in the past, that's fine. If not, and we have to vote on it, we will consider that.

I don't know if my colleague wants to make a statement at this time. If not, I will swear in the witnesses, and we will take their statements and we will proceed to the examination.

Gentlemen, please rise for the purpose of taking the oath.

[Whereupon, John Keeney, Joseph Gangloff, G. Allen Carver, Jr., and Gerald McDowell were called as witnesses and, having first been duly sworn, were examined and testified as follows:]

The CHAIRMAN. Mr. Keeney.

SWORN TESTIMONY OF JOHN KEENEY
DEPUTY ATTORNEY GENERAL, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

Mr. KEENEY. Yes, Senator.

The CHAIRMAN. Do you have a statement that you'd like——

Mr. KEENEY. I do not have a statement, Senator. Do you want me to put in the record a little bit of my background?

The CHAIRMAN. That would be fine, certainly.

Mr. KEENEY. I am a career lawyer in the Department of Justice. I started in the Department in 1951. I served in the Internal Security Division of the Organized Crime and Racketeering Section, and in the Fraud Section. I was Chief of the latter section. In 1973, I became Principal Deputy Assistant Attorney General in the Criminal Division and I have served in that capacity ever since.

The CHAIRMAN. Mr. Gangloff.

SWORN TESTIMONY OF JOSEPH GANGLOFF
PRINCIPAL DEPUTY CHIEF, PUBLIC INTEGRITY SECTION
U.S. DEPARTMENT OF JUSTICE

Mr. GANGLOFF. Thank you, Senator.

I have had the privilege of working for the Department of Justice since 1977 when I joined the Department of Justice Honors Program as a trial attorney in the Antitrust Division. In 1981, I joined the Public Integrity Section of the Criminal Division as a trial attorney, and over time, my supervisory titles have changed and my responsibilities have evolved.

I am currently the Principal Deputy Chief of the Public Integrity Section, and I have held that position since March 1994. I served as the Acting Chief of that section from April 5, 1993 through

March 1994, and during that time, I reported directly to Mr. Keeney. Prior to serving as Acting Chief, I had served as a Deputy Chief of the section since March 1992, and in 1998—or excuse me, 1988, I was named Director of the section's Conflicts of Interests Crimes Branch. As Acting Chief and Deputy Chief my duties have included supervising all section litigation in all aspects of the section's investigative and legislative work.

The CHAIRMAN. Mr. Carver.

SWORN TESTIMONY OF G. ALLEN CARVER, JR.
SENIOR COUNSEL TO THE CHIEF OF THE
ASSET FORFEITURE AND MONEY LAUNDERING SECTION
U.S. DEPARTMENT OF JUSTICE

Mr. CARVER. Thank you, Senator.

I have a brief biographical sketch which I will simply submit to the Committee, if that will be sufficient. I have no opening statement to make.

The CHAIRMAN. Certainly.

Mr. McDowell.

SWORN TESTIMONY OF GERALD McDOWELL
CHIEF OF THE ASSET FORFEITURE AND MONEY
LAUNDERING SECTION, U.S. DEPARTMENT OF JUSTICE

Mr. MCDOWELL. Thank you, Senator.

I have been with the Department of Justice as a prosecutor for 28 years with the Organized Crime Section. I was Chief of the Public Integrity Section, Chief of the Fraud Section. And I'm presently a Chief of the Asset Forfeiture and Money Laundering Section.

The CHAIRMAN. Tell me about that Public Integrity Section. Is that the section in charge of seeing to it that there's not an abuse of power or authority by the various people in the Department?

Mr. MCDOWELL. No, the Office of Professional Responsibility has that. It's headed by Michael Shaheen.

The Public Integrity Section is in the Criminal Prosecutors Section and it handles what you call public corruption cases at the Federal, State, and local levels.

The CHAIRMAN. Thank you very much.

Mr. Giuffra.

Mr. GIUFFRA. Good morning.

Mr. Gangloff, I would like to begin with you. If we could put up on the Elmo some notes that you prepared at a meeting dated December 26, I believe it was 1993, we received these notes at your deposition, and we have not yet had a chance to question you about them. Let's just turn your attention to page 3 of your notes. Do you recall attending a meeting on 12/20/93?

Mr. GANGLOFF. First, let me observe, I can't read the monitor.

Mr. GIUFFRA. Do you have a copy of your notes with you?

Mr. GANGLOFF. I have a copy of several documents that were provided to me, and it will take me a moment, I think, to——

Mr. GIUFFRA. There would be a 3 in the upper right-hand corner.

Mr. GANGLOFF. Yes, I have it.

Mr. GIUFFRA. Do you recall attending a meeting on December 20, 1993?

Mr. GANGLOFF. As I've—I want to preface the answer by simply stating that I have provided both House and Senate depositions on this matter, as well as having been interviewed by the Independent Counsel. And to the extent that, at various times, I've been shown various notes and sometimes provided a context for my answers, I have had various opportunities to try to recollect what happened during these relevant periods.

I don't have a specific memory of a 12/20 meeting. I believe I know the meeting to which you are referring, which was a meeting that occurred in Mr. Keeney's office, and involved several people indicated on my notes, although this, I thought that was the 12/20 meeting. So I don't have a specific recollection of this meeting. If you would put it into some context as to did I meet for a certain issue, that would be helpful.

Mr. GIUFFRA. Let's look further down at your notes. There is a discussion in your notes of a missing——

Mr. GANGLOFF. I'm sorry. This says 12/26, not 12/20.

The CHAIRMAN. Mr. Gangloff, let me ask you something. Just sit back a little. No one is trying to trap you. We're trying to go over what you remember about the meeting and your notes. This is—all right? You are coming on a little strong.

Mr. GANGLOFF. I understand that, but——

The CHAIRMAN. I don't understand why a person with your background is so jumpy. So let's start all over. Just relax.

Mr. GIUFFRA. Do you recall the meeting at which these notes were prepared?

Mr. GANGLOFF. I do not have a specific recollection of this meeting.

Senator SARBANES. Mr. Gangloff, either you are going to sit up as you were previously, which got the Chairman—apparently provoked the Chairman, or you are going to have to pull that microphone closer to you so we can hear it. But if you sit back and leave the microphone where it was, we won't be able to hear you.

Mr. GIUFFRA. Well, Mr. Gangloff, in these notes there's a reference to a missing Whitewater file. At any time in December 1993, do you recall any discussion at any meeting about a missing Whitewater file?

Mr. GANGLOFF. I see my notes. When I was asked, just minutes ago by someone from the Department of Justice, did I recall this discussion, and he tried to find this spot in the notes, I said I don't recall a meeting involving the missing Whitewater notes.

Would you at least establish for the record that these are notes of a 12/26 meeting, because it may be my misrecollection, but I thought you were asking me about a 12/20 meeting?

Mr. GIUFFRA. The notes on the upper left-hand corner indicate 12/26 and then below that it says 12/20.

Mr. GANGLOFF. No, it says 10:20 with a colon indicating the time.

Mr. GIUFFRA. And then below that, it says 12/20.

Mr. GANGLOFF. You are right. So both dates are on this sheet.

Mr. GIUFFRA. My question is do you recall any discussion in December 1993, within the Department of Justice, of a missing Whitewater file?

Mr. GANGLOFF. I don't have any recollection of it independent of these notes.

Mr. GIUFFRA. Further down in the notes, it says "someone," and it's torn off at the bottom, "to contact Shaheen," that would be Mr. Michael Shaheen who we've just learned is the head of OPR, and it says "re: missing Whitewater file."

Again, no recollection of what——

Mr. GANGLOFF. Well, it says "contact Shaheen," if I'm looking at the right spot, it says "McD," which would be Mr. McDowell.

Mr. GIUFFRA. "Re: missing Whitewater file."

Mr. GANGLOFF. Right. I will also tell you the reason I have some confusion about the notes is my recollection of the 12/20 meeting, which was of some significance and does have a place in my memory, was that Jo Ann Harris was not there. And to the extent JAH appears on these notes, I indicate that to mean that 12/20, whatever is being indicated here, that that JAH is a reference to Jo Ann Harris, and I didn't recall her presence at the 12/20 meeting.

Mr. GIUFFRA. Mr. McDowell, do you recall attending a meeting at which a missing Whitewater file was discussed?

Mr. MCDOWELL. Yes.

Mr. GIUFFRA. Could you tell the Committee what you recall about that meeting?

Mr. MCDOWELL. My recollection is that it was—we generally went over the status of the investigation that we were doing in the Fraud Section, with Public Integrity. One of the items that came up, and my best recollection is there was something in the newspapers about a missing Whitewater file. And none of us knew anything about it and I was tasked to talk to Shaheen, and that just became one of the items that we were looking for. We weren't aware of any other than what was in the newspapers.

Mr. GIUFFRA. Did you ever find out whether there was, in fact, a missing Whitewater file?

Mr. MCDOWELL. I don't believe we did. If we did, I don't remember. And it seemed to be just a blind alley but one that we had to follow out.

Mr. GIUFFRA. Mr. Keeney, if I could direct your attention to a meeting on September 20, 1993, that you might have—that you attended with Mr. Nathan, Mr. Gangloff, and for part of the meeting, Mr. McDowell. At this meeting I believe Mr. Nathan described certain allegations that David Hale had made about President Clinton. Do you recall that meeting?

Mr. KEENEY. I recall it generally, yes.

Mr. GIUFFRA. Could you describe for the Committee what, the substance of the allegations that Mr. Hale was making?

Mr. KEENEY. He was making, as I recall it, allegations that he had information which would implicate then-Governor Clinton and other people in what might have been illegal activities.

Mr. GIUFFRA. And how did Mr. Nathan come to learn of this information?

Mr. KEENEY. Mr. Nathan told us that he got it from a confidential source, whose name he was not able to disclose at that time.

Mr. GIUFFRA. And you subsequently learned that the source was Jeff Gerth of The New York Times?

Mr. KEENEY. I did.

Mr. GIUFFRA. As of September 20, 1993, had Paula Casey, the U.S. Attorney for the Eastern District of Arkansas, advised Main Justice about Mr. Hale's allegations against President Clinton?

Mr. KEENEY. I don't believe so.

Mr. GIUFFRA. There was no urgent report, for example——

Mr. KEENEY. I don't recall one.

Mr. GIUFFRA. Now, Mr. Gangloff——

Mr. KEENEY. But in fairness there, I might say some of those went not to the Criminal Division but to the Executive Office for U.S. Attorneys, but I have no recollection of one.

Mr. GIUFFRA. Mr. Gangloff, are you aware of any report by Paula Casey to Main Justice about these allegations?

Mr. GANGLOFF. Let me first, at least, say that the 12/20 meeting I said I recalled was actually the September 20th meeting, and I'm not aware of any memo because I'm also not aware that there were allegations against the President at that time, specific allegations.

Mr. GIUFFRA. Did you learn at this meeting that there were allegations against the President?

Mr. GANGLOFF. I learned that there were allegations concerning the President, but I didn't learn of any specific and credible allegations against the President.

Mr. GIUFFRA. Do you recall stating at your deposition that you believe that Main Justice should have been advised earlier about these allegations against the President?

Mr. GANGLOFF. I don't recall that specifically. If I said that Main Justice should have been consulted earlier, it was with the qualification that my belief in that is generated by my experience in Washington, and that I would have a different threshold than a U.S. Attorney in the field as to what was appropriate to bring to Washington's attention.

Mr. GIUFFRA. Mr. Keeney, at this meeting, you and Mr. Gangloff and Mr. McDowell discussed the need for Ms. Casey to recuse herself from this Hale matter. Do you recall that?

Mr. KEENEY. Yes.

Mr. GIUFFRA. Did you believe that Ms. Casey should recuse herself from the Hale matter?

Mr. KEENEY. Based upon the information that had been provided by Irv Nathan, I did believe that, for appearance sake, she should recuse herself.

Mr. GIUFFRA. Why did you believe that she should recuse herself?

Mr. KEENEY. Because she was the U.S. Attorney in Little Rock, Arkansas. She was appointed by the Clinton Administration. And we had a situation where somebody who was under investigation was suggesting to—or Nathan's source, that he had information which would implicate the President who had appointed her.

Mr. GIUFFRA. Now later, on September 20, 1993, did you call Ms. Casey?

Mr. KEENEY. I did.

Mr. GIUFFRA. Could you tell the Committee what you advised Ms. Casey to do with regard to the matter of recusal?

Mr. KEENEY. Yes. I advised her it would be appropriate for her to recuse herself for the reasons I've just indicated. As a matter of perception, not because I had any lack of confidence in either her

integrity or ability, but just because of the position she was in and who appointed her and what city she was in, that it would be appropriate for her to recuse herself.

Mr. GIUFFRA. When you spoke to Ms. Casey on September 20, was it your understanding that she was aware of Mr. Hale's allegations against the President?

Mr. KEENEY. My understanding was that she had talked, at least briefly, with counsel for Judge Hale and that I think she was generally aware of it.

Mr. GIUFFRA. When you spoke to Ms. Casey——

Mr. KEENEY. I think she was also aware of the—what subsequently turned out to be the Gerth investigation.

Mr. GIUFFRA. When you spoke to Ms. Casey, did you express your opinion that she should recuse herself in strong terms?

Mr. KEENEY. I would say so, yes.

Mr. GIUFFRA. You felt that she certainly should not be involved in this particular matter.

Mr. KEENEY. I did.

Mr. GIUFFRA. And you advised her of that fact?

Mr. KEENEY. I did.

Mr. GIUFFRA. Mr. Gangloff, at the meeting on the 20th, that was your view as well; am I correct?

Mr. GANGLOFF. It was my view that she should recuse, that is correct.

Mr. GIUFFRA. And Mr. McDowell, was it also your view that Ms. Casey should recuse?

Mr. MCDOWELL. Yes.

Mr. GIUFFRA. So the three of you at the meeting all believed that Ms. Casey should recuse?

Mr. KEENEY. Yes.

Mr. GIUFFRA. Mr. Keeney, what was Ms. Casey's response to your strong view that she should recuse from this matter?

Mr. KEENEY. Well, she said, in essence, I'm a fair person, I'm a person of integrity, I can handle this, this matter as my oath of office requires me to do so. And I just made the argument that I didn't challenge her in any respect in that regard.

My only point was in the interest of her and in the interest of the Department that she recuse herself because of her particular position and the appointing authority.

Mr. GIUFFRA. Now, during this phone call on September 20, did Ms. Casey advise you that she had been taught by Mr. Clinton when she was in law school?

Mr. KEENEY. I don't know. At some point I became aware of that but I don't know at what point. I don't know whether it was in that conversation or not. It may well have been.

Mr. GIUFFRA. Did she advise you that her husband had worked for Mr. Clinton?

Mr. KEENEY. I became aware of that at some time. Whether I became aware of it in that conversation I don't recall.

Mr. GIUFFRA. Did she advise you that she was close to President and Mrs. Clinton?

Mr. KEENEY. I don't think so.

Mr. GIUFFRA. Did she mention the nature of her relationship and the closeness of her relationship with Governor Tucker?

Mr. KEENEY. I think she did mention Governor Tucker, yes.

Mr. GIUFFRA. Were you aware at this time that some of the allegations Mr. Hale was making and also allegations contained in the Madison referral related to Governor Tucker?

Mr. KEENEY. I probably was. I have no specific recollection.

Mr. GIUFFRA. Do you recall telling Ms. Casey that she should recuse herself from dealing with the Madison referral C0004?

Mr. KEENEY. When I talked to her, I was talking in terms of not only the Hale allegations but the Madison allegations. I treated them as one package and recommended that she recuse herself as with respect to the whole thing.

Mr. GIUFFRA. And she did not want to recuse herself from either matter; is that correct?

Mr. KEENEY. Well, she was reluctant. As I said, she viewed it as a suggestion that she was not capable of handling these matters in a fair fashion, and I think the bottom line was, we ended up, she said she was going to have to think about it.

Mr. GIUFFRA. When was the next time that you heard from Ms. Casey with regard to recusal?

Mr. KEENEY. I am not sure that I heard from her subsequently.

Mr. GIUFFRA. OK. So you maybe learned about it when she finally announced that she would recuse herself from this matter in November, 1993?

Mr. KEENEY. I learned about it after she had announced to the people in the Deputy Attorney General's Office that she was going to recuse herself, and that I think was sometime in November.

Mr. GIUFFRA. If we could, let's put up on the Elmo the memorandum from Steven Irons to the special agent in charge, dated October 1, 1993. And let's see if we can get the whole memo in and particularly the yellow marked section.

This memorandum was sent by Mr. Irons and reflects a meeting that he had on September 24, 1993, with Ms. Casey and Assistant U.S. Attorney Jackson. And at this meeting there was discussion of the involvement of Mr. Tucker, Mr. Ward—Seth Ward, Webb Hubbell's father-in-law—and Mr. Smith.

At this meeting, according to Agent Irons, who testified here yesterday, Ms. Casey advised that she would have to recuse herself and only had to decide the best time to do so. Now, according to Agent Irons, Ms. Casey saw no immediate need to publicly advise of her recusal and preferred to wait until a more opportune time from a public relations standpoint.

My question to you, Mr. Keeney, is you were not advised of the fact that, 4 days after your phone call, Ms. Casey had taken a different view with regard to this recusal issue?

Mr. KEENEY. I don't believe I was.

Mr. GIUFFRA. Mr. Gangloff, were you ever advised of that?

Mr. GANGLOFF. No, I don't believe I was.

Mr. GIUFFRA. Mr. Carver.

Mr. CARVER. No.

Mr. GIUFFRA. Mr. McDowell.

Mr. MCDOWELL. [No verbal response.]

Mr. GIUFFRA. Mr. Keeney, you would have wanted to have been advised by Ms. Casey that she was taking a different view 4 days after you had spoken to her?

Mr. KEENEY. Well, the important thing to me was that she would in fact recuse herself, and that she would not be involved in taking any sort of a proffer from David Hale.

Now, we had discussions—I don't know whether you are going to get into this or not—we had discussions with respect to whether or not there would be a plea or some other disposition with Hale. They were taking the position—they, the office, Paula Casey and her office—were taking what I thought was a proper position. Namely that they would not buy a pig in a poke, they would not enter into any negotiation or deal with Hale until there was a proffer, at least a lawyer proffer, from the lawyer for Judge Hale.

Mr. GIUFFRA. Do you recall discussions——

Mr. KEENEY. That's a matter I was very much interested in, but we seemed to be in agreement with respect to it, so it was not a matter that stayed high on my radar screen.

Mr. GIUFFRA. I guess two questions. Once Ms. Casey made a judgment that she should recuse herself from this matter, she should have recused herself. Doesn't that make sense to you, sir, based on your experience of more than 35 years?

Mr. KEENEY. At least she should not be making any decisions with respect to the matter after she had decided to recuse herself.

Mr. GIUFFRA. So that as of September 24, she shouldn't make any more substantive decisions with regard to this matter or on this matter; you would agree with that; right?

Mr. KEENEY. That would be my view, yes.

Mr. GIUFFRA. And Mr. Gangloff, you would agree with that view based on your experience?

Mr. GANGLOFF. I don't mean this accurately reflects the decision that she made.

Mr. GIUFFRA. Mr. Carver, you would agree with that view?

Mr. CARVER. Yes.

Mr. GIUFFRA. Mr. McDowell, you would agree?

Mr. MCDOWELL. Yes.

Mr. GIUFFRA. With regard to the proffer, do you recall any discussions, Mr. Keeney, in which you expressed to the Eastern District of Arkansas the fact that Main Justice would take a proffer from Mr. Hale?

Mr. KEENEY. No, that's not quite accurate. She had told me that the counsel for Hale said that when I kept saying we need a proffer if we're going to discuss this, she said well, at one time the counsel said he didn't trust the people in the office in the Eastern District of Arkansas, so I said in that case, would you tell Mr.—I forget what his name is—Coleman I think it is——

Mr. GIUFFRA. That's correct.

Mr. KEENEY. —that he can come to Washington and make the proffer if he chooses.

Mr. GIUFFRA. Do you recall, Mr. Gangloff, a letter being sent to, a discussion that the Eastern District of Arkansas would send a letter to Coleman to inform him that this option of making the proffer to Main Justice was available?

Mr. GANGLOFF. Yes, I recall detailed discussions with respect to assuring that Coleman knew that he in fact could come, and had avenue to Main Justice.

Mr. GIUFFRA. Do you recall a discussion of the fact that the Eastern District of Arkansas would put that in writing and send a letter to Mr. Coleman?

Mr. GANGLOFF. That was my expectation as to what would happen.

The CHAIRMAN. Did that happen, if you know?

Mr. KEENEY. Not to my knowledge.

Mr. GIUFFRA. Mr. Gangloff, are you aware of such a letter?

Mr. GANGLOFF. No.

Mr. GIUFFRA. Now, with regard to Ms. Casey's decision on RTC criminal referral C0004——

The CHAIRMAN. Why would you have asked for that letter, or for the fact that Main Justice was willing to entertain a proffer if they did not feel comfortable doing so in the Eastern District in Arkansas? What was your reason for saying, put that in writing and send it to him?

Mr. KEENEY. My reason, Senator, was merely to inform him that he had an option, if he had information with respect to criminal activity and was unwilling to give it to the Eastern District of Arkansas, then we in the Criminal Division would be willing to receive that and interested in receiving that information from him.

The CHAIRMAN. Sure, and you would do it in writing so that you were assured that that would transpire, and therefore, the question of whether or not an attorney was dealing in an environment that he found to be unfair would be answered, because you're saying to him in writing here, if you don't like or you don't feel comfortable dealing with us, you can go to Washington. That's why you would prefer that it be put in writing so there would be no——

Mr. KEENEY. I would prefer that it would be put in writing but I don't know that I insisted that it be put in writing.

The CHAIRMAN. Well, Mr. Gangloff indicated that——

Mr. KEENEY. I will defer to him on that. It was important to me that that fact be communicated so that he wasn't up—counsel wasn't up against a blank wall.

The CHAIRMAN. Exactly, exactly. And, you know, it was not done, and I think that is important because that still leaves open the question as to whether counsel really understands that there are people in Washington that he can come and make that proffer with a sense of some kind of security. But go ahead.

Mr. GIUFFRA. Mr. Chairman, I would also observe that Ms. Casey testified that she did not send such a letter to Mr. Coleman.

Let's put on the Elmo the declination letter dated October 27, 1993. This is from Ms. Casey to Ms. Lewis.

Mr. Keeney, as far as you're aware, the decision whether to decline criminal referral C0004, was that one that was left to the U.S. Attorney's Office in Arkansas?

Mr. KEENEY. I had nothing to do with it. I don't know.

Mr. GIUFFRA. Mr.——

Mr. KEENEY. Maybe I'm not understanding your question. That was within the purview of the Eastern District of Arkansas, and if she made the declination, it was within her responsibilities.

Mr. GIUFFRA. But as far as you are aware, no one from the Main Justice Department directed Ms. Casey to decline this criminal referral?

Mr. KEENEY. Not that I'm aware of.

Mr. GIUFFRA. This was a decision that she made on her own?

Mr. KEENEY. Yes; as far as I know, yes.

Mr. GIUFFRA. Mr. Carver, as far as you know, did——

Mr. BEN-VENISTE. Can we put the last paragraph of that letter on the Elmo as well? I don't know if the witnesses have it in front of them.

Mr. GIUFFRA. Yes, we can make that smaller.

Mr. Carver, do you know if you or anyone at Main Justice reviewed this declination letter before it was sent out?

Mr. CARVER. Not that I know of.

Mr. GIUFFRA. Mr. Keeney, are you aware of anyone at Main Justice reviewing this declination letter before it was sent out?

Mr. KEENEY. I am not.

Mr. GIUFFRA. Mr. McDowell.

Mr. MCDOWELL. No.

Mr. GIUFFRA. And you would view the declination of a referral to be a substantive act by a U.S. Attorney; correct?

Mr. KEENEY. Yes.

Mr. GIUFFRA. So that if Ms. Casey indicated that she was going to recuse herself on September 24, yet she acted on a criminal referral more than a month later, that would be somewhat contrary to what you had thought would be the proper approach; is that right?

Mr. KEENEY. Normally when you recuse yourself, you get out and you don't make any substantive decisions thereafter.

Mr. GIUFFRA. You would not be signing a letter thereafter like this; is that right?

Mr. KEENEY. Normally you would not. But she may have an explanation for that, and I think she probably does, but that's something else.

Mr. GIUFFRA. Mr. Carver, did there come a time when you read a press account indicating that Paula Casey did not participate in any decisionmaking with regard to this criminal referral C0004?

Mr. CARVER. Yes.

Mr. GIUFFRA. And Mr. Carver, were you amazed when you read that press article?

Mr. CARVER. Yes.

Mr. GIUFFRA. Why were you amazed when you read the press article that Paula Casey—there had been an account that Paula Casey did not participate in the decisionmaking with regard to this referral?

Mr. CARVER. I'm going to answer you but I'm going to lean forward a little bit because it's easier for me in talking into the mike, with the permission of the Chairman.

The CHAIRMAN. Absolutely.

Mr. CARVER. My reaction was one of at least surprise in that it had been my impression all along that when the action was completed within the Criminal Division, as I understood it, the decision had been made within the Department to go back to the U.S. Attorney, or at least the office at the time, with the action item to say the decision must be made by you with respect to that particular referral.

When I saw the article later that indicated that the decision had been made in the Criminal Division, that did not comport with my understanding, nor did I recall any effort to check the accuracy of that information that was released in a press release.

Mr. GIUFFRA. The decision was not made by Main Justice?

Mr. CARVER. To my knowledge, it was not, but I can't speak for everyone in the Justice Department. I don't believe that it was.

Mr. GIUFFRA. Do you think if the decision had been made by Main Justice you would have been aware of that fact?

Mr. CARVER. I would hope so but I wouldn't be absolutely certain that I would be.

Mr. GIUFFRA. Mr. McDowell, as far as you know, the decision was not made by Main Justice; right?

Mr. MCDOWELL. Right. I think the whole point was to send it back to the U.S. Attorney.

Mr. GIUFFRA. Mr. Gangloff, as far as you know, the decision was not made by Main Justice?

Mr. GANGLOFF. That's right.

Mr. GIUFFRA. And Mr. Keeney has already answered the question.

Mr. KEENEY. That's right.

Mr. GIUFFRA. At the time that Ms. Casey signed this declination letter, Mr. Carver, her office had received some additional criminal referrals relating to Madison; is that right?

Mr. CARVER. As I recall the chronology, in early October, mid-October, definitely before the date of this letter, she had received nine additional criminal referrals.

Mr. GIUFFRA. And that would have been before she acted on the declination?

Mr. CARVER. That's correct.

Mr. GIUFFRA. She was also dealing at that time, as far as you know, with Mr. Hale's lawyer; correct?

Mr. CARVER. Yes.

Mr. GIUFFRA. So she was aware of additional allegations, other than those contained in criminal referral C0004, at the time she declined this referral?

Mr. CARVER. Presumably. That would assume that she actually saw the nine criminal referrals and that some assistant U.S. Attorney in the office did not in her stead, but I would assume that, yes.

Mr. GIUFFRA. So that if she had seen those additional criminal referrals, this would—many of which implicated, for example, Mr. Tucker—she should not have been signing this declination letter?

Mr. CARVER. I would not have signed the declination letter.

Mr. GIUFFRA. Mr. Gangloff, if I could direct your attention, do you recall a meeting on November 3, 1993—this would be at Main Justice—at which it was discussions with Ms. Casey herself, about whether she should recuse from Madison and Hale matters?

Mr. GANGLOFF. I'm not sure of the date but I recall a meeting.

Mr. GIUFFRA. Mr. Keeney, do you recall attending that meeting?

Mr. KEENEY. My recollection is that I did not attend that meeting, although there is some indication it was on my calendar. But I have no recollection of attending, and I don't believe I did.

Mr. GIUFFRA. Mr. McDowell, do you recall attending this meeting?

Mr. McDOWELL. I hate to tell you this. My mind was elsewhere. Which meeting was this?

Mr. GIUFFRA. This would be the meeting on November 3rd at which there was discussions with Mr. Heymann as to whether Ms. Casey should recuse herself from Madison/Hale matters?

Mr. McDOWELL. I don't remember the date, but the meeting in the Deputy's Office——

Mr. GIUFFRA. Yes.

Mr. McDOWELL. —sure.

Mr. GIUFFRA. And the purpose of that meeting was to basically convince Ms. Casey that she should recuse herself?

Mr. McDOWELL. Yes.

Mr. GIUFFRA. At that meeting, was it the unanimous view of Mr. Heymann, Ms. Harris who was Assistant Attorney General for the Criminal Division, Mr. Keeney as far as you recall to the extent he was there, Mr. Urgenson, Mr. McDowell, Mr. Gangloff, that she should recuse herself from these matters?

Mr. McDOWELL. Going down the list like that, I don't know that everyone spoke out on it. In fact, I don't even think Mr. Keeney was there. But I don't recall any dissents. I think it was the general position of everyone who spoke that they would try to convince her to recuse.

Now, whether—there were other people there too and I don't know that everybody had the same feeling. For instance, the EOUSA people, I don't know where they came out on it. But the people that were speaking, that I recall, all had the same opinion that it would be a good idea if she recused.

Mr. GIUFFRA. What was Ms. Casey's response to the advice of the senior Justice Department officials that she recuse from Madison/Hale related matters?

Mr. McDOWELL. Well, I think she was clearly mulling it over. All the talk seemed to be going in the same direction, that she should recuse, and she said some of the things that she had said to Mr. Keeney earlier that she thought that she could do a good and a fair job and she was kind of regretting the fact that she was in this position. And I recall her mentioning that she had a friendship with Governor Tucker and that might be a sufficient reason, but she didn't come to any conclusion in front of us, but it was clear that she was thinking about it. It was a serious meeting.

Mr. GIUFFRA. But she still had not committed to recusing as of this meeting in November?

Mr. McDOWELL. Not as of the time the meeting broke up, no.

Mr. GIUFFRA. She never mentioned at this meeting that she had told Agent Irons back in September that she would recuse?

Mr. McDOWELL. As I said, I have no memory of her saying that, no.

Mr. GIUFFRA. If we could put up on the Elmo the document which contains, I believe it's notes of Mr. Carver or Mr. McDowell. If we could make that a little smaller perhaps. We're not sure—whose handwriting is that? Is that Mr. Carver's or is that Mr. McDowell's?

Mr. McDOWELL. Since my name is spelled wrong, let's say for the record it's not my handwriting.

The CHAIRMAN. Could you refer Mr. Carver to a particular document so we can have it in front of him? Does he have that? Have you provided that?

Mr. GIUFFRA. I believe it should be in his packet.

Mr. CARVER. Thank you, Mr. Chairman. I have the document.

The CHAIRMAN. Do you?

Mr. CARVER. I see it. And that was another surprising event. When I read in the newspaper that I had written a memorandum making the statement that apparently appears in this particular document, which I'm quite confident I must have made at some time, I—in that—that's not a memorandum and that's not my document.

I suspect that what probably happened here is that this is a series of notes taken by an official in the FBI, and I believe that because I have heard about this since in some conversation with colleagues.

It is not my memorandum. These are not my notes.

Mr. GIUFFRA. Do you recall a discussion at some time during 1993 of the fact that certain documents had been transported over to the White House from the SBA?

Mr. CARVER. I remember a series of events—and I'm not sure how far you want to go into this at this point—in addition, I made memorandums of those events which should be or may be a part of your files. And the FBI as well made memorandums of those events, focusing strictly on the SBA documents.

Mr. GIUFFRA. What do you recall about the communication of those SBA documents over to the White House?

Mr. CARVER. I recall that an SBA employee named Stephens informed me that certain material had been provided to the White House. Part of this I believe arose in the context of a broader meeting in relation to the SBA support for the office in Little Rock in doing their criminal investigation.

I recall that I consulted with the Federal Bureau of Investigation and had a meeting with Mr. Stephens to determine further what he had in mind and determine what course of action to take, and advising folks up the chain of command within the Department that we had this issue.

I remember wanting to see the documents, simply as an investigative step, to determine what documents had been produced, the circumstances of the documents, what discussions may have occurred with individuals who may be interested in the documents. If my recollection serves me correctly, part of the reason I was interested in all this was I had read in the newspaper that Mr. Hale's attorney had had contact with an attorney in the White House.

Mr. GIUFFRA. That would be Mr. Kennedy?

Mr. CARVER. I believe so. In any event, it was simply an investigative step that appeared to be appropriate to take, and I wanted the information. I wanted to get the documents. I wanted copies of the documents. I wanted notes on the documents. I wanted notes taken from the documents. In addition, I wanted the people who handled them interviewed to determine what had occurred in connection with those particular documents. And these events evolved,

again, in discussions with the Federal Bureau of Investigation in Washington, DC.

Mr. GIUFFRA. Why were you concerned about the communication of these documents over to the White House?

Mr. CARVER. I was interested in terms of an investigative step in light of the allegations or specific allegations that had been made relating to Whitewater.

Mr. GIUFFRA. And also with regard to the President?

Mr. CARVER. Correct.

Mr. GIUFFRA. So you were concerned about information, perhaps confidential SBA information, being communicated over to the President's lawyers at the White House?

Mr. CARVER. Not exactly. I was interested in finding out what happened. I was not at a level of concern. I wanted to know what happened. I'm an investigator, or people were investigators at that point. There was the possibility of an entirely innocent explanation of that kind of activity; although in my judgment, ill-advised.

Mr. GIUFFRA. The activity was ill-advised in your judgment?

Mr. CARVER. In my judgment. Under the circumstances at the time it was a mistake in my judgment.

Mr. GIUFFRA. For the documents to have been sent over to the White House?

Mr. CARVER. Correct, in the manner in which they were dispatched.

Mr. GIUFFRA. Mr. Keeney, would you have a similar view with regard to these documents, that they should not have been sent over to the White House?

Mr. KEENEY. Yes, I thought it was an unwise thing for them to be requested and an unwise thing for them to be sent over without consultation with the Department. I don't consider it illegal, but I consider it in this context very unwise.

Mr. GIUFFRA. Thank you.

The CHAIRMAN. Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Gentlemen, I would like to ask first—I am going to yield to Mr. Ben-Veniste here shortly—how many of you are familiar with the Mark MacDougall memorandum on criminal referral number C0004 of February 23, 1993, the one in which his recommendation at the end of it is, "Based solely upon available information and in light of applicable law and current fraud section standards for prosecution, the conduct of James B. McDougal, Susan McDougal, and Lisa Anspaugh as described in the criminal referral does not appear to warrant the initiation of a criminal investigation."

This was the referral to which the declination letter of Paula Casey of October 27th dealt with. Were you familiar with that memorandum, Mr. McDowell?

Mr. MCDOWELL. Yes.

Senator SARBANES. In fact, it was to you, I gather.

Mr. MCDOWELL. That's right.

Senator SARBANES. Mr. Carver.

Mr. CARVER. Yes, Senator.

Senator SARBANES. Mr. Gangloff.

Mr. GANGLOFF. I don't recall having seen it.

Senator SARBANES. Mr. Keeney.

Mr. KEENEY. I read it but after the fact, Senator.

Senator SARBANES. In that memo, he also said, "Finally, no facts can be identified to support the designation of President Clinton, Hillary Rodham Clinton, or Governor Tucker as material witnesses to the allegations made in the criminal referral." He said that earlier on. Now, do you have the declination letter of October 27th before you, of Paula Casey to Jean Lewis?

Mr. MCDOWELL. Yes, Senator.

Senator SARBANES. Could we put it up on the machine. Actually, I want the whole letter up if we can do that.

Now, apparently the Office of Legal Counsel of the Executive Office for the U.S. Attorneys indicated to Paula Casey that this matter had not been disposed of, as it were, so she wrote Ms. Lewis and said, "I'm writing at the request of the Office of Legal Counsel, Executive Office for U.S. Attorneys of the U.S. Department of Justice, to let you know the status of this referral.

"As you know, this referral was reviewed by the Criminal Division of the U.S. Department of Justice at the request of the previous U.S. Attorney for the Eastern District of Arkansas."

Is that correct?

Mr. MCDOWELL. Yes.

Senator SARBANES. The matter was concluded before——

Mr. MCDOWELL. Excuse me. Technically the Criminal Division reviewed it because the Deputy's Office sent it down to us, but the chain started with the U.S. Attorney in Arkansas.

Senator SARBANES. All right. "The matter was concluded before I began working in this office, and I was unaware that you had not been told until I was contacted by the Office of Legal Counsel. After receiving the call from Legal Counsel, I reviewed the referral, and I concur with the opinion of the Department attorneys that there is insufficient information in the referral to sustain many of the allegations made by the investigators or to warrant the initiation of a criminal investigation."

That was the opinion of Mark MacDougall who did this memorandum; is that correct?

Mr. MCDOWELL. Right.

Senator SARBANES. And did you concur in that opinion?

Mr. MCDOWELL. Yes.

Senator SARBANES. Mr. Carver.

Mr. CARVER. I would not concur with the statement that the matter was concluded before she began working. In terms of his general analysis of the matter and its merit or not, there were a number of factors in his memorandum, and certainly in the U.S. Attorney's letter, that I believe warranted a determination, if someone were going to make it, and would justify it not to proceed with that particular allegation criminally.

Among them, the previous acquittal of Mr. McDougal on similar charges; among them, his physical situation and his emotional situation as it had been reported; among them, his financial situation and his lack of financial means.

There were a number of reasons that could very well have supported the declination. So in general, I have no quarrel with Mr.

MacDougall's memo, but I think it can be misunderstood that Mr. MacDougall's memo, as we sit here, was a conclusion. It was not. It was a document that accompanied a cover memorandum that I prepared as a proposal for Mr. Keeney to sign, which later, as I understand it, was actually signed by Larry Urgenson who was an Acting Deputy Assistant Attorney General at the time, addressed to Mr. Frazier, which recommended to Mr. Frazier that the matter be sent back to the U.S. Attorney and that the request by the previous U.S. Attorney to recuse be denied.

And accompanying that I suggested if Mr. Frazier thought it was appropriate, the MacDougall memo should accompany it to let the U.S. Attorney's Office know at least and have the benefit of our evaluation within the section.

Senator SARBANES. Well, if I would have been a U.S. Attorney and I had received the MacDougall memorandum, I assume I would have declined the referral. Would not that have been a reasonable course of conduct in light of the memorandum?

Mr. CARVER. In my mind, it would not. If I had been the U.S. Attorney, I would have assigned or gone to the Assistant U.S. Attorney primarily assigned to the matter, and I would have had the Assistant U.S. Attorney make an independent review, substantively, of the evidence in the case and determine, and make a recommendation to me.

Especially in light of the nine additional referrals that had come into the office, prior to declining this one or declining C0004, I think what I would have done was simply have included it in the package of nine, which, in effect, I think happened, even though technically she may have said it was declined, the information was with the FBI, there was no information that was lost, the option to pursue it was still there. But in any event, in terms of process, I would have been, I believe, a little more demanding.

Senator SARBANES. All right.

Then Ms. Casey went on and said, "Although I am declining to take further substantive action on this referral, my decision does not foreclose future prosecutions about the matters covered by the referral or related matters in the event that my office and the FBI are given access to records or information indicating that prosecutable cases can be made." So Ms. Lewis was being told that additional information could be provided; is that correct?

Mr. CARVER. In my mind, that's correct. And I think that was an excellent statement to include in the letter. It left the door open to go back.

Senator SARBANES. Mr. Ben-Veniste.

Mr. BEN-VENISTE. To follow up on this, Mr. Keeney, you surmised that there might be an explanation in addition to what we have heard from Ms. Casey about how it was that, following her recusal, she signed this letter.

I would call to your attention the testimony of Richard Pence, who was I think at one point the First Assistant U.S. Attorney in the Arkansas U.S. Attorney's Office, at page 81, which I think throws some light on this. Mr. Pence was asked:

Question: Now, when you talked with Ms. Casey about the referral, you told her about the Criminal Division reports that we have talked about earlier, meaning the McDougal matter?

Answer: Yes.
Question: And is it your recollection that you told her essentially that the Criminal Division had found no prosecutive merit?
Answer: Yes, I did tell her that.
Question: Did you feel there was anything misleading in the way she worded the letter?
Answer: No, I didn't see anything misleading about it.
Question: It was consistent with what you knew and understood about the referral?
Answer: Yes.

So that, unbeknownst to you when you were asked that question, Mr. Keeney, Ms. Casey had apparently been told by her staff assistant, who carried on between the two administrations, who was a transitional Assistant U.S. Attorney, that the Department in Washington had already signed off on the matter and had found no prosecutive merit, so that this was presented to her as a fait accompli.

Mr. KEENEY. I am not familiar with that aspect of it, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Well, I'm bringing it now to your attention to round out what was told to Ms. Casey contemporaneously.

Mr. KEENEY. What we did do in that connection when we sent the memorandum, which was for my signature, under my name, to Mr. Frazier, we indicated that in effect that it was a discretionary call by the U.S. Attorney and we wouldn't be upset if it was decided to decline it.

Mr. BEN-VENISTE. And as Mr. Carver has pointed out, the letter that she wrote which held open the door for further consideration of the substance, together with subsequent events, meant that the matter of this check kiting, to the extent it had any prosecutive merit, could be considered by other career prosecutors who then considered the matter; is that right?

Mr. CARVER. That's correct.

Mr. BEN-VENISTE. OK. So that if this criminal referral had any prosecutive merit and somebody thought so, there would have been some prosecution, or at least the possibility of some prosecution, of this check kiting matter; correct?

Mr. CARVER. The Independent Counsel would have the option.

Mr. BEN-VENISTE. Right. Now, even before the Independent Counsel came along, we have another step and that is the step of the appointment of a career prosecutor from the Department of Justice who took over responsibility for these matters following Ms. Casey's recusal; correct?

Mr. CARVER. That's correct.

Mr. BEN-VENISTE. And that was?

Mr. CARVER. Don Mackay.

Mr. BEN-VENISTE. And you gentlemen all participated in this selection of Mr. Mackay for that assignment; correct?

Mr. KEENEY. I did.

Mr. CARVER. Yes, sir.

Mr. MCDOWELL. Yes.

Mr. BEN-VENISTE. Now, with respect to the questions that you were asked earlier about the Hale plea negotiations, I think it's important to point out, that although apparently no formal letter was written to Mr. Coleman advising him about the fact that he could come to the Department of Justice and make a proffer if he were

so inclined, that he well knew of that option. And I would call Counsel's attention to Mr. Coleman's deposition at page 110 when I questioned him as follows:

Question: Now at the point I think Mr. Gicale asked you whether you knew where the Department of Justice made its headquarters and how to make a phone call up here and how to visit if you were so inclined.

I take it you did not seriously consider leapfrogging the U.S. Attorney's Office in Little Rock and coming up to Washington to talk to career attorneys at the Department of Justice about whether they would have a different take on the situation than the Little Rock U.S. Attorney's Office was providing to you?

Answer: Did I consider that a possibility?

Question: OK.

Answer: Did I consider it at all?

Question: Yes.

Answer: I can't say that it wasn't considered.

Question: Considered and rejected?

Answer: Obviously not favorably acted upon by Mr. Coleman. Considered and deemed that it would be ineffective.

Question: Now, you have had contact over the years with the professional corps at the Department of Justice Criminal Division. By that, by which I mean the people who have been there for decades through Republican, Democratic Administrations as career Department of Justice officials.

Meaning you gentlemen.

Answer: I do not believe that I have.

Question: Did you know that such individuals existed as a life form up here?

Answer: I gathered there would be individuals who would have existed as a life form like that up here, as they did in Little Rock.

Question: And you did not think that it was feasible or practical or a viable alternative to the stalemate of your negotiations with Little Rock?

Answer: No.

So quite clearly if there is any implication that Mr. Coleman didn't know that he could come to Washington and make a proffer if he were so inclined, that is specifically refuted by his testimony before this Committee in his deposition.

Let me turn to the fact of what actually occurred with the Hale negotiation. In that matter, as we have heard testimony, Mr. Hale through his attorney was taking the position agreement first, proffer later. If Mr. Coleman had come to the Department of Justice with such a proposal, is there anyone among you who would have agreed to that proposal?

Mr. KEENEY. I would not, no.

Mr. MCDOWELL. No.

Mr. CARVER. No.

Mr. GANGLOFF. No.

Mr. BEN-VENISTE. Mr. Coleman took the position that his client should be giving consideration in a plea negotiation for maintaining his law license and his ability to continue practicing or sitting as a judge by getting a misdemeanor plea, again, prior to making any kind of a proffer. Is there anyone among you who would have considered, in view of the contact involved, that Mr. Hale be given a misdemeanor under such circumstances?

Mr. Keeney.

Mr. KEENEY. I would have reluctance, I would have a great deal of difficulty in agreeing to a misdemeanor plea in this context, but I would not have made a final decision on that until such time as a detailed proffer were given.

Mr. BEN-VENISTE. But again, proffer first?

Mr. KEENEY. Proffer first, absolutely.

Mr. BEN-VENISTE. Mr. Gangloff.

Mr. GANGLOFF. In the absence of a proffer, there would be no recommendation as to an appropriate charge.

Mr. BEN-VENISTE. Mr. Carver.

Mr. CARVER. Mr. Keeney said it earlier, you wouldn't buy a pig in a poke and no, you wouldn't take it.

Mr. MCDOWELL. And I agree with that too.

Mr. BEN-VENISTE. The poke, as I understand it, because I looked it up——

Mr. CARVER. It's a bag.

Mr. BEN-VENISTE. Carrying case for a pig.

Mr. CARVER. You wouldn't buy, if someone were going to sell you a pig and told you it was in a bag, you wouldn't buy it, would you?

Mr. BEN-VENISTE. If you couldn't look at it, see what it looked like, and make your decision based on that. So I guess a poke is an opaque carrying case for a pig.

In terms of Mr. Hale's proposal, in fact, when Mr. Mackay was dispatched to take over responsibility, is it not the case that Mr. Mackay proposed to Mr. Coleman that he would listen to a proffer with an open mind, that he wouldn't insist that there would have to be a felony plea, but he would listen to the proffer and then make a determination? Did you all understand that to have been the case?

Mr. KEENEY. I don't know that I understood it to be the case, but I have no difficulty with it.

Mr. BEN-VENISTE. A letter has been presented to the Committee, and it's in evidence before us, that such a proposal was made in January by Mr. Mackay, and still Mr. Coleman on behalf of Mr. Hale did not agree to it. So all of this back and forth about who would make a proffer first and under what circumstances is all belied in terms of the legitimacy of such an argument by the fact that even after Mr. Mackay took over the responsibility, no proffer was forthcoming.

Now, at the same time did you learn, Mr. McDowell, that Mr. Hale had had meetings with members of the media?

Mr. MCDOWELL. Yes.

Mr. BEN-VENISTE. He was refusing to make a proffer to the U.S. Attorney's Office, the Department of Justice, the FBI, but here he was meeting extensively with members of the media. How did you learn about it Mr. McDowell?

Mr. MCDOWELL. Well, when Mr. Nathan came to talk to us and gave us the initial information about the Hale case, and I followed it up, I remember seeing an FBI document where the FBI SAC in Little Rock recounted an interview that he had given to Jeff Gerth of The New York Times where Gerth was talking about what Hale would say and do.

And then when we surfaced that, it turned out that Gerth was the fellow that had taken—was the informant that Nathan had, so it looked like Coleman was using Gerth to send messages to the FBI and the Department of Justice in Washington, and telling them, giving them in effect proffers but not in any usable form.

Mr. BEN-VENISTE. So in fact, on the basis of this tactic that was being used, pressure was being applied to get the Government to accept the terms under which Mr. Hale would provide a proffer and

yet the Government would have no opportunity to question Judge Hale and make its own determination; correct?

Mr. MCDOWELL. That's right.

Mr. BEN-VENISTE. Mr. Keeney, did you express a view about this type of a tactic, using the press to apply pressure to try to get the deal you want?

Mr. KEENEY. I may have, Mr. Ben-Veniste, I find it totally inappropriate, but I don't know whether I expressed myself in that respect.

Mr. BEN-VENISTE. I think you have in substance in that way, in terms of a risky gamble essentially on the part of counsel to try to apply pressure in that way to get the deal you want. Would that be your view, Mr. McDowell?

Mr. MCDOWELL. Yes, it was then and is now.

Mr. BEN-VENISTE. Let me go back to the first criminal referral that was submitted by Ms. Lewis. We heard testimony yesterday—you probably don't know about it because it wasn't reported in the press—that the U.S. Attorney, Mr. Banks, felt that he was under tremendous pressure from Ms. Lewis on the basis of a number of telephone conversations—telephone calls and face-to-face visits by Ms. Lewis, both to the FBI and to the U.S. Attorney's Office, to push for action on the criminal referral that had been submitted on September 2, 1992.

Thereafter, Mr. Banks wrote a letter which has been entered into the record here, in which, in essence, he said he was not going to take any action with respect to that criminal referral prior to the election, that he felt that there was pressure being put on him to do so, and that the potential consequences would be that this could become an issue in the election itself and he wanted no part of that.

Mr. Keeney, you've been with the Department of Justice since well before I've had any dealings, since the early 1950's, I believe?

Mr. KEENEY. Yes, sir.

Mr. BEN-VENISTE. What was your view about the appropriateness of Mr. Banks' conduct?

Mr. KEENEY. I thought it was totally appropriate and commendable. All he was doing was putting it off until after the election so that, at that late date, he would not be generating information or publicity that might impact on the election.

Mr. BEN-VENISTE. So you felt it was totally appropriate and commendable, if I heard you?

Mr. KEENEY. I do, yes.

Mr. BEN-VENISTE. Mr. McDowell, you have been, among other things, the head of the Public Integrity Section for almost 10 years I guess——

Mr. MCDOWELL. Twelve.

Mr. BEN-VENISTE. Twelve years, during your career at the Department of Justice. What is your view about the appropriateness of Mr. Banks' resisting the pressure that he was getting and saying that he wasn't opening a file, he wasn't going to take any overt steps with respect to the criminal referral that Jean Lewis had sent over?

Mr. MCDOWELL. I think he did the right thing. It is a very difficult decision to make for a prosecutor, especially a U.S. Attorney,

because there is pressure, and you obviously can be second-guessed no matter which way you go. But I think the right thing to do was what Mr. Banks did and hold off so he doesn't politicize the criminal justice process.

Mr. BEN-VENISTE. Let's go to the substance of the criminal referral itself. Now, I believe you testified, in your deposition before this Committee, that "The referral came in half baked." What did you mean by that?

Mr. MCDOWELL. I think it was probably premature, that it could have used more investigation before it came in.

Mr. BEN-VENISTE. And you also said, "The case looked junky." I know that's not a term of art, but it expressed your view about the quality of the underlying case referenced in the referral. What did you mean by that?

Mr. MCDOWELL. At the time, there were thousands or maybe tens of thousands of allegations that had surfaced about savings and loans and banks throughout the country. There was a crisis. And one of the results was that the Justice Department was getting thousands and thousands of referrals. It couldn't possibly work them all as criminal cases, even though they were coming in as potential criminal referrals, and you had to have some method of prioritizing them. You would look for cases that you could win, and that made an impact, and punished the big wrongdoers. Some cases that came in had no prosecutive merit but still took a lot of time and personnel to work was a junky case, and in effect, it dissipated our strengths and didn't let us do the things we should have been doing.

Mr. BEN-VENISTE. If I understand what you are saying, you have limited resources, you have a huge backlog of investigations by reason of the fact of the failure of hundreds, if not thousands, of banks throughout the United States and you have to prioritize the use of your resources?

Mr. MCDOWELL. Right.

Mr. BEN-VENISTE. Now, in connection with this referral, I believe Mr. Carver described the fact that you were dealing with the target of the investigation who had been previously prosecuted, was flat broke, had had a mental breakdown, and was living in a borrowed mobile home.

So under those circumstances, how would you have evaluated using your resources to prosecute such a case if you were down in Little Rock? Even if you felt that there might be a Federal crime involved and that you could be successful in such a prosecution.

Mr. MCDOWELL. I think it would have taken a lot of thought and you would have to articulate some good reasons to go forward with it, especially if there were, and I believe there were, other major investigations that were waiting to be done on big, big failures in the District, the Eastern District of Arkansas.

There could be some circumstances where you may want to go forward, but when you add all of those negatives up, it does not come to mind what those circumstances would be.

Mr. BEN-VENISTE. Did you conclude, as you testified in your deposition, that the case seemed like it would be an enormous waste of time?

Mr. MCDOWELL. Yes, I did think it would be a diversion of resources that we didn't have an awful lot of in Arkansas.

Mr. BEN-VENISTE. And of course, we heard testimony yesterday that there were two banks, one a $600 million loss and the other a $900 million loss that the same investigator had been assigned but had done nothing on while she pursued this investigation. Indeed that she had received specific information from an insider on one of those banks, including a large quantity of documents, and that although she had written a favorable letter on behalf of the person who had provided the information and promised, essentially the sentencing judge that a criminal referral would result from the information, in fact, she simply put the whole matter aside and did nothing on it.

So is that what you are talking about in terms of——

Mr. MCDOWELL. I wasn't aware of all those details but I knew there were the two major cases that you mentioned that had been pending in that district, and that they weren't being worked.

Mr. BEN-VENISTE. The two—when you say "cases," two institutions.

Mr. MCDOWELL. Two institutions that probably should have been cases, right.

Mr. BEN-VENISTE. Now, to put the final cap on the Hale negotiations, are you aware, Mr. McDowell, that ultimately instead of the one felony that Little Rock was insisting on, Mr. Hale pleaded to two felony counts in connection with the deal he ultimately made.

Mr. MCDOWELL. That's my understanding, yes.

Mr. BEN-VENISTE. A question was raised, Mr. Gangloff, about a missing Whitewater file in some notes that reflected a meeting at the Department on December 26, 1994, I guess; is that correct?

Mr. GANGLOFF. Yes.

Mr. BEN-VENISTE. And Mr. Carver, you were at that meeting apparently?

Mr. CARVER. No.

Mr. BEN-VENISTE. Mr. Gangloff, you were at that meeting?

Mr. GANGLOFF. I assumed it was a meeting as opposed to a telephone call, but I was present for whatever exchange of information took place.

Mr. BEN-VENISTE. Let me ask all of you, is there some conspiracy afoot now at the Justice Department among you all to cover up some missing Whitewater file that you know about?

Mr. Keeney.

Mr. KEENEY. No, sir.

Mr. BEN-VENISTE. Mr. Gangloff.

Mr. GANGLOFF. No, sir.

Mr. CARVER. No.

Mr. MCDOWELL. No.

Mr. BEN-VENISTE. In fact, I took this to be that you were getting up to speed on Whitewater allegations at this point. This is a meeting the day after Christmas, if it did, in fact, take place on that day, and that if someone made such a statement, as you sit here today, none of you have any knowledge about a so-called missing Whitewater file?

Mr. KEENEY. I have none.

Mr. MCDOWELL. My recollection is that we were reacting to something that we read in the paper and were wondering ourselves what we talked about, and that's what I was supposed to find out, is there a missing Whitewater file, not that we knew that there was one.

Mr. BEN-VENISTE. OK. That puts it in proper perspective, then. My time is up, so I will yield back to the Chairman.

The CHAIRMAN. Do you have any further line that you would like to pursue?

Mr. BEN-VENISTE. Oh, yes.

The CHAIRMAN. Why don't you continue——

Mr. BEN-VENISTE. If you have something——

The CHAIRMAN. Well, I intend to finish this panel as quickly as possible, and I really want to do it. We are moving quickly, so let's continue to do that.

Mr. BEN-VENISTE. I have covered, I think, the 1992 issue of the action about Mr. Banks and the criminal referral. We've talked a little bit about Ms. Casey.

Let me ask you, Mr. Keeney, in the years that you've been at the Department of Justice, have you seen examples from time to time when new U.S. Attorneys have been faced with the issue of potential recusal and have responded more or less in the same way that Ms. Casey originally responded?

Mr. KEENEY. I have.

Mr. BEN-VENISTE. Why don't you characterize that kind of a response where somebody seems to be attacked personally on their ethics.

Mr. KEENEY. Well, in the situations I remember, they view it—when you talk recusal, they view it as an attack on their integrity, their credibility, and their ability to carry out the responsibilities of office. And because of that, they kind of recoil initially at the idea of recusal.

Mr. BEN-VENISTE. Indeed, there had been some further news articles generated by Mr. Hale and Mr. Coleman down in Little Rock that I'm sure Ms. Casey brought to your attention, wherein she was being attacked as a political partisan, and she reacted to that. She didn't like being—having her ethics attacked.

Mr. KEENEY. I think she mentioned that in the conversations we had and certainly I became aware of it later.

Mr. BEN-VENISTE. So you find it understandable that she might react adversely to that, but you and Mr. McDowell and Mr. Carver and others had considered this issue. Mr. Heymann was involved in that decision. I guess Mr. Nathan as well. You looked at the longer term implications of this and thought from the standpoint of appearances that it would be appropriate and, indeed, very desirable for Ms. Casey to recuse on this issue?

Mr. KEENEY. Yes.

Mr. MCDOWELL. That's correct.

Mr. BEN-VENISTE. And let me ask each of you, do you know of any single piece of evidence to suggest that the investigation of these matters was harmed or impeded in any way by reason of the difference in time between when this issue first surfaced and Ms. Casey's decision?

Mr. KEENEY. I don't.

Mr. GANGLOFF. I do not.
Mr. CARVER. No.
Mr. MCDOWELL. No.
Mr. BEN-VENISTE. Now, with respect to the SBA matter, Mr. Carver, did you come to some conclusion about the motives of those involved from the White House side, Mr. Eggleston, et cetera, in connection with attempting to obtain that which Congress had already obtained?
Mr. CARVER. I had an impression, and I must add that I am not sure that was concluded. That may be something within the scope of the Independent Counsel's concern.
Mr. BEN-VENISTE. But in terms of your review.
Mr. CARVER. Well, based on the evidence we were able to collect through the interviews with the people and the circumstances of that, my impression was that this was an effort to get information to be responsive to what was going on in the press at the time, and also to track what was going on with the Congressional Committee at the time, and to be informed about what the Congressional Committee was seeing in anticipation of what the next question might be, that sort of thing.
Mr. BEN-VENISTE. Based on that, was it your impression that the motivation was, in your words at your deposition, totally innocent?
Mr. CARVER. That was my impression, right or wrong.
Mr. BEN-VENISTE. Let me ask whether any of you is aware of anything that occurred to somehow impede the investigation of Mr. Hale by reason of the transfer of these documents?
Mr. Keeney.
Mr. KEENEY. I'm not aware of any.
Mr. GANGLOFF. I'm not aware of anything.
Mr. CARVER. Absolutely not.
Mr. MCDOWELL. No, I don't know of any.
Mr. BEN-VENISTE. Indeed, Mr. Hale had been indicted by this time?
Mr. KEENEY. Yes.
Mr. BEN-VENISTE. The newspaper article, which was the result of these extensive interviews that Mr. Hale had given, had already been published by this time. Are you aware of that, Mr. McDowell?
Mr. MCDOWELL. No, I'm not.
The CHAIRMAN. Mr. Ben-Veniste, if you want to stay here and read into the record what's been published and what hasn't been, but let's move this along, please.
Mr. BEN-VENISTE. Without reading it into the record, let me advise you that on I believe it was November 2nd or 3rd, articles appeared in The New York Times and The Washington Post reflecting extensively what Mr. Hale had told the newspaper reporters. Indeed, as we've been told, that was the catalyst for Congressman LaFalce requesting materials from the SBA. Does that refresh your recollection?
Mr. MCDOWELL. Sort of, yes.
Mr. BEN-VENISTE. To put a final closure on this, with respect to the SBA transfer of documents to the White House and their return to the SBA, you don't know of anything that happened, no bad thing happened as a result of that even though it was, in Mr.

Keeney's view and others here, ill advised for such a request to have been made; correct?

Mr. KEENEY. Correct.

Mr. BEN-VENISTE. Indeed, I believe Mr. Eggleston testified that he thought the SBA had cleared this somehow with the Department and when he heard that there was a problem, he got the documents back.

I have nothing further, Mr. Chairman.

The CHAIRMAN. Do you have anything, Mr. Giuffra?

Mr. GIUFFRA. Mr. Chairman, just very quickly.

The CHAIRMAN. Good.

Mr. GIUFFRA. I know it is getting close to the lunch hour. If we could put up on the Elmo an E-mail from Mr. Carver dated August 13, 1993.

The CHAIRMAN. Will you refer him to it, please, in his packet so he can look at it.

Mr. GIUFFRA. You're aware of this E-mail?

Mr. CARVER. I have it, and I'm completely familiar with it.

Mr. GIUFFRA. Did there come a time in August 1993 that you learned that Mr. Hubbell had had a meeting with certain members of the RTC Professional Liability Section in Washington?

Mr. CARVER. I learned that Mr. Hubbell was scheduled to have a meeting with the Professional Liability staff to talk with them, and afterward, I learned a little bit about what occurred at the meeting.

Mr. GIUFFRA. What did you learn occurred at this meeting that Mr. Hubbell had with the RTC PLS staff in Washington?

Mr. CARVER. The sum and substance of it is reflected in the document that you have, reporting on the meeting to Larry Urgenson.

Mr. GIUFFRA. If you could read into the record the portion of the E-mail that is highlighted in yellow?

Mr. CARVER. I am reading now this portion that's highlighted in yellow. "He also mentioned that if the RTC should receive demands for document production from a U.S. Attorney's Office which the RTC believes is unreasonable, the RTC should feel free to let him know."

Mr. GIUFFRA. Did it seem odd to you that Mr. Hubbell would go to the RTC and make such a statement in retrospect?

Mr. CARVER. In retrospect, as I sit here today, he had as one of his responsibilities the Civil Division. It was not unusual in those days for disputes to arise in connection with subpoenas for documents between the providing financial institutions or the RTC and concerned the U.S. Attorney. And those disputes usually were resolved professionally between the parties, most often involved volumes of material and the kind of reviewing that would have to occur within the agency. In that sense, I suppose, it would not be particularly unusual.

Another aspect of it is that apparently, he had people with whom he had dealt——

Mr. GIUFFRA. That's April Breslaw?

Mr. CARVER. His law firm, of course, had been retained, I believe, by the RTC. I don't know who these people were within the RTC. I didn't know then. The reason I sent this up primarily was that this was a senior departmental official who is visiting an organiza-

tion, and this touched on an area that the Criminal Division had a keen interest in and I thought that at the time my boss, Jerry McDowell, should know, and Larry Urgenson, who is the Acting Deputy Assistant Attorney General responsible for that area should be aware of what was occurring.

Mr. GIUFFRA. Mr. Carver, do you recall your testimony at your deposition, pages 60 to 61, in which you testified, "Looking back at this meeting and knowing this guy is a colossal crook, you know, you may think it is rather strange." What did you mean by that testimony at your deposition?

Mr. CARVER. What I meant by "colossal crook" was exactly that, that he is a convicted felon for being engaged in substantially fraudulent activity, so that speaks for itself. And that in looking at that, one of a suspicious mind might draw inferences from that contact that could very well be mistaken or could very well be correct. That's all.

The CHAIRMAN. Let me ask you, did you know that April Breslaw had retained his firm at that time?

Mr. CARVER. I didn't know April Breslaw had retained his firm.

The CHAIRMAN. Well, she had recommended, to be more precise.

Mr. CARVER. I was aware that the RTC had a contract with his firm and we certainly had an interest in that.

The CHAIRMAN. Is that one of the reasons you were somewhat suspicious?

Mr. CARVER. No, not really.

The CHAIRMAN. If you had known that April Breslaw was the person who had done that and she was at this meeting where this took place, would that have given you any cause to be concerned?

Mr. CARVER. If there had been more facts—honestly, if there had been more factual information to suggest that he was trying to get inside information on the investigation or he was trying to steer an investigation, that would have been of considerable concern.

The CHAIRMAN. You have to admit it was somewhat unusual to single out and say if you think these requests are unreasonable, let us know. And I didn't put those words in the deposition. Those are your words.

Let me ask you something, because I have heard a lot about plea bargaining or proffers and pigs in a poke. So let's go right to it.

Mr. Keeney, I guess you've been in this business for many, many years. Is it unusual for an attorney to come and start the bargaining—let's use layman's language—on behalf of his client by trying to get the best deal he possibly can? That's not unusual, is it?

Mr. KEENEY. No, it is not, Senator.

The CHAIRMAN. Generally, he doesn't get the best deal. In other words, he starts out the bidding—it's kind of like a bidding process, isn't it?

Mr. KEENEY. Yes, sir.

The CHAIRMAN. If any attorney were to come to you, he would obviously attempt to do the best he possibly could for his client; isn't that correct?

Mr. KEENEY. That's correct.

The CHAIRMAN. So it is not unusual that someone will come and say I would like you to drop all charges for information or plead

to a misdemeanor or some kind of infraction or whatever, that's generally the manner in which they start, isn't it?

Mr. KEENEY. That's frequently the initial approach, Senator.

The CHAIRMAN. The fact that an attorney came with something that would be outlandish, that's not novel?

Mr. KEENEY. It is not novel.

The CHAIRMAN. It is almost customary?

Mr. KEENEY. Well, it's not unusual, Senator.

The CHAIRMAN. And you say OK, now, let's talk?

Mr. KEENEY. Yes.

The CHAIRMAN. What do you have to give us? And indeed in some cases, Mr. Carver, you have handled some cases where you have had some of the most wretched, terrible people who have done some horrible things, but they may have some information that is so valuable, that you would decide after they give you the information that you're not going to buy the poke?

Mr. CARVER. That's correct.

The CHAIRMAN. You want to know whether the person has any good information and if they do, even though we may think they are a horrible, a terrible individual and we can prove it, if there is some information that will help us convict other people, you might even take it; right?

Mr. CARVER. There's a rather typical process——

The CHAIRMAN. I think of a case in New York, one of those organized crime cases where this fellow admitted killing all kinds of people, but as it related to them getting somebody else, they made a deal. I don't even know if the fellow got any time whatsoever.

Mr. BEN-VENISTE. He did, 20 years. Sammy the Bone, you mean?

The CHAIRMAN. I think he's bopping around.

Mr. BEN-VENISTE. I don't think Sammy is bopping anywhere.

The CHAIRMAN. I thought he was bopping around. Is he hiding? I don't know. In any event, the point is that this is not unusual; is that true?

Mr. KEENEY. That's true, Senator.

The CHAIRMAN. Mr. Chertoff.

Mr. CHERTOFF. I just want to pursue very briefly on that issue, Mr. Keeney. My understanding is in line with what the Chairman said, that the issue here wasn't so much where the lawyer for Mr. Hale wanted to begin the negotiation. The issue is you need to get a proffer on the table. You need to know what it is the potential cooperator has to offer in order to start the process of negotiating; is that correct?

Mr. KEENEY. That's correct.

Mr. CHERTOFF. Did Ms. Casey tell you when you had your conversation with her on September 20th that Mr. Coleman had expressed unease or discomfort with her office being involved in receiving the proffer and that he, himself, had requested of her by letter that a separate or an independent prosecutorial office evaluate his proffer?

Mr. KEENEY. She indicated that he had some concern dealing with the office. I don't recall the latter part, no.

Mr. CHERTOFF. Again, is it fair to say in your experience that one of the things a potential cooperator is going to be concerned about

is how valuable the prosecuting agency regards his information as being?

Mr. KEENEY. Absolutely, yes.

Mr. CHERTOFF. So if there is a concern about the zeal or the vigor with which the prosecutor will pursue this information, that's going to be something that's of concern to the cooperator because it's in the cooperator's interest to make sure the prosecutors really want to follow his leads and follow up on his information?

Mr. KEENEY. Yes.

Mr. CHERTOFF. Now, I take it it is based in part upon Mr. Coleman's own expressed discomfort about dealing with the Little Rock office on this sensitive matter that you suggested to Ms. Casey that she notify Mr. Coleman that he could contact your office in Main Justice?

Mr. KEENEY. Yes.

Mr. CHERTOFF. And notwithstanding the long passage Mr. Ben-Veniste read into the record about whether Mr. Coleman could find the phone number of Main Justice and how much consideration he had given to calling Main Justice, you would agree with me that it would have been useful for Mr. Coleman to know that Main Justice was ready, willing, and able to hear a proffer from him about this sensitive matter?

Mr. KEENEY. I thought it was, yes.

Mr. CHERTOFF. Did you know that Ms. Casey neither wrote a letter to Mr. Coleman suggesting that or told him that you had extended an invitation to him to reach out directly for you and Main Justice?

Mr. KEENEY. I subsequently learned that.

Mr. CHERTOFF. Let me also address this issue of the letters back and forth with Mr. Mackay regarding the proffer. Mr. Ben-Veniste indicated in his summary of the letters that somehow Mr. Coleman had declined to proffer to Mr. Mackay. I think I need to clarify that. The letters are in the record. We've put them up before.

I believe the state of play as of the time Mr. Fiske was appointed was that they were discussing a proffer. Mr. Coleman still had some concerns about the conditions under which the proffer would be given, but there was a give-and-take and with the announcement of Mr. Fiske coming in, I take it I'm correct that Mr. Mackay was no longer to be involved in the process as a prosecutor?

Mr. KEENEY. He stepped out of the process and as to the earlier part of your question, I really have no knowledge.

Mr. CHERTOFF. So you haven't seen the letters.

Finally, let me come back to this issue, Mr. Carver, of the SBA documents. There's a reference made in your notes or reference made, rather, in your memoranda about the need to get interviews of the people at the White House who were involved in this issue of obtaining the documents. Do you know whether, in fact, Mr. Heymann, the Deputy Attorney General, himself at some point had to become involved in the process of obtaining these interviews for the FBI?

Mr. CARVER. My recollection is that he got involved and that there was a question about the procedure of the interviews. I was directly involved in that.

Mr. CHERTOFF. Tell us about that.

Mr. CARVER. I simply—simply that when the FBI endeavored to conduct the interviews, the format that was suggested to the Bureau [by White House attorneys] was that individuals who were witnesses and attorneys at the time in the White House would proceed by one representing the other and then change hats and be a witness. That did not seem to me to be a sound practice, nor to the FBI.

As a result of that, we made further efforts to explain our concerns and they may not have been fully appreciated by people there at the time and ultimately the issue was resolved and we got the interviews.

Mr. CHERTOFF. And was it resolved, to your knowledge, by Mr. Heymann making a call and insisting that, in fact, lawyers from the White House Counsel's Office were going to be witnesses——

Mr. CARVER. I have no firsthand knowledge of that but my impression is he did, in fact, have communications with him.

Mr. CHERTOFF. And just to make sure we all understand what the concern was, you didn't object to these witnesses having lawyers. The objection was to having one witness be a lawyer for another witness and then having—reversing hats afterwards with a second witness being a lawyer for the first witness?

Mr. CARVER. Yes.

Mr. CHERTOFF. That makes sense to me for some reason.

Finally, Mr. McDowell, you've been asked some questions by Mr. Ben-Veniste in regard to these notes of the meeting in December concerning the missing Whitewater file, and I just want to focus in on that for a second with you and Mr. Gangloff.

Am I correct that the issue here, it's the end of the year, you're trying to take stock as to where everything is, and I recognize that within a matter of a couple of weeks, Mr. Fiske takes over, and you all are out of it and you don't know what else is happening. But as of this point, am I correct that one of the issues that was being examined was whether there was, in fact, some missing documentation or missing records that had been in Mr. Foster's office?

Mr. MCDOWELL. Right. I think that's what the reference is all about.

Mr. CHERTOFF. There are references to Mr. Shaheen, who—am I correct that at that time Mr. Shaheen was supposed to be examining the Travelgate matter?

Mr. MCDOWELL. Yes, he was, but I don't think that had anything to do with what we were talking about.

Mr. CHERTOFF. In the course of the meeting, there's a reference made by, I guess, Jo Ann Harris, indicating that she wanted you to reach out for the Foster files. Do you remember that?

Mr. MCDOWELL. To the extent that you're saying it. What I was supposed to do is see if I could find any truth to this allegation that was appearing because it was somewhat embarrassing; we were supposed to be doing the investigation and we see something in the newspaper that does not ring any bell with us. One of the things you want to do is find out if there is any truth to it, is there a missing file, and if there is, does it have anything relevant to our investigation.

Mr. CHERTOFF. In connection with that, was there a question you were supposed to pursue about whether Mr. Nussbaum had ever

made an inventory of the records that were involved—that were present in Mr. Foster's office that were personal Clinton papers?

Mr. MCDOWELL. I think that's one of the ways we were trying to determine if there was anything missing.

Mr. CHERTOFF. Did you have an opportunity to get in touch with Mr. Nussbaum before your investigation was turned over to Mr. Fiske?

Mr. MCDOWELL. I didn't do it, no. The only thing I did was go to talk to Mike Shaheen to get some grounding in what he had done with the Foster case.

Mr. CHERTOFF. And what had Mr. Shaheen done?

Mr. MCDOWELL. I really—I am having a hard time—he gave me an FBI report, a lengthy FBI report to read, and we discussed—I remember we had some discussions about whether or not there was a diary and whether there was anything in it of relevance. It turned out that, at least in the time the Fraud Section had the case, we didn't find any missing file or none of this stuff amounted to anything. But when I got back from Shaheen's office we discussed what I had learned and tried to follow up on any files.

Mr. CHERTOFF. And then eventually Mr. Fiske takes over?

Mr. MCDOWELL. That's right.

Mr. CHERTOFF. Just to follow the last thread of this, Mr. Keeney, are you aware of the fact that in this last year, Mr. Shaheen registered certain strong complaints about the fact that a notebook, which we have actually had in this Committee over the summer relating to the so-called Travelgate matter written in Mr. Foster's own hand, had not been disclosed to the Department of Justice for a period of at least a year after it was first requested of the White House?

Mr. KEENEY. I read it in the paper.

Mr. CHERTOFF. Did you have personal contact with Mr. Shaheen about that?

Mr. KEENEY. Not that I recall.

Mr. CHERTOFF. Did you, Mr. McDowell?

Mr. MCDOWELL. No.

Mr. CHERTOFF. Do you know, Mr. Keeney, to whom Mr. Shaheen was directing his complaint inside Justice concerning this notebook that was withheld?

Mr. KEENEY. The appropriate place would have been directed to the Deputy Attorney General's Office.

Mr. CHERTOFF. So that was a complaint that he made to the Deputy Attorney General's Office?

Mr. KEENEY. I don't know that he made it, but that would be the appropriate place to lodge the complaint.

Mr. CHERTOFF. And you have not been involved in the issue of why that travel notebook in Mr. Foster's hand which had been in his office was withheld from Mr. Shaheen?

Mr. KEENEY. I was not, no.

Mr. CHERTOFF. Mr. Gangloff, have you been involved in that?

Mr. GANGLOFF. No, I have not.

Mr. CHERTOFF. Mr. Carver.

Mr. CARVER. No.

Mr. CHERTOFF. Mr. McDowell.

Mr. MCDOWELL. No.

Mr. CHERTOFF. Thank you, Mr. Chairman.

The CHAIRMAN. Before I turn to Mr. Ben-Veniste, I am going to suggest to Counsels that we should call Mr. Shaheen in to ascertain who he spoke to and what the essence of this was. We may not need to bring him before the Committee but we certainly need to depose him about this file, about this notebook and why it was withheld.

Mr. Ben-Veniste or Senator Sarbanes.

Mr. BEN-VENISTE. My recollection is that the notebook was reviewed by the Park Police.

Mr. CHERTOFF. I think that's incorrect.

The CHAIRMAN. All I'm suggesting is that we attempt to—all I'm saying is that I think——

Mr. BEN-VENISTE. The diary was reviewed by the Park Police. The book that Mr.——

The CHAIRMAN. I am going to ask the Counsels, in the interest of saving some time, to review this and determine whether it's necessary to bring him in.

I think you have a few matters to wrap up.

Mr. BEN-VENISTE. Yes.

The CHAIRMAN. And then I want to make a statement.

Mr. BEN-VENISTE. Mr. Chairman, I wanted to give you a status report with respect to the request for information that had been submitted to Ms. Lewis. We were trying to ascertain when, in fact, she purchased the second tape recorder to determine whether her explanation of the old tape recorder coming on by itself really was a credible explanation for how she tape-recorded Ms. Breslaw.

Obviously, it was important to us to learn whether she had purchased the tape recorder prior to the Breslaw meeting or, as she had contended, whether she purchased it afterwards. In response to our subpoena, we received a letter of November 7, 1995, from her counsel identifying a purchase made on February 17, 1994, which would have been then some 2 weeks after her meeting with Ms. Breslaw.

When our staff contacted the store in question, it was learned that the item which was identified in that letter and the accompanying bank statement did not, in fact, refer to the purchase of the tape recorder, but referred to the purchase of a pen and some other items.

So yesterday, we issued subpoenas and we received from Office Depot a receipt which reflects that on January 17, 1994, an Olympus Pearl Quarter Model S–924 was purchased by Ms. Lewis at the Office Depot store in question for $49.99, that the account number reflects the identical number of Ms. Lewis' work number which we have in other material, and that, in fact, the so-called new tape recorder was purchased then in advance of her meeting with Ms. Breslaw, which would then call into question why, if she had a new tape recorder, would the Breslaw conversation be taped by an old tape recorder.

Obviously, we have additional information to obtain in connection with this. This is an interim report. We have the new tape recorder because we requested that Ms. Lewis provide that to this Committee. The Independent Counsel's Office has the original tape made on that tape recorder. I believe that it might be advisable for

us to send the new tape recorder to the Independent Counsel's Office because tape experts will be able to compare the original tape to the new tape recorder and determine whether it was made on that tape and obviously that would be of significant interest.

The CHAIRMAN. I will ask our attorneys to pursue this matter as we have initially and as we will continue to do and offer, obviously, Ms. Breslaw the opportunity through her attorneys——

Mr. BEN-VENISTE. Ms. Lewis.

The CHAIRMAN. —to respond accordingly—excuse me, Ms. Lewis; I am so interrelated with the two of them now—but Ms. Lewis to respond through her attorneys.

If you have no further questions of these witnesses, first of all, let me thank the witnesses for coming in. I know it's not always easy to have—it's impossible to have total recall.

It's not always easy to keep matters compartmentalized as you go and have active schedules, even with a particular issue, given so many things that come into play, and then to have the kind of recall that we seem to be asking for might appear to be somewhat unreasonable, but I want to thank all of you. I think your testimony was as straightforward as I've ever seen, which is commendable, and very few of you had the kind of memory loss that many of our witnesses truthfully come in here and put forward, which has been, in some cases, just really absolutely shocking and not credible.

I want to say to the contrary, I think you exemplify the highest traditions of the office that you represent and you've done a very excellent job. I don't know if Senator Sarbanes has anything to say to the panel.

Senator SARBANES. Only to thank the panel for their testimony, both here and in the course of the extensive depositions that were given.

The CHAIRMAN. The remarks I'm going to make now do not have anything to do with the panel, so I would say that if you want to leave, we thank you for your cooperation today, and as Senator Sarbanes has indicated, in the future.

Mr. KEENEY. Senator, may I just thank you for your kind remarks and also thank Senator Sarbanes on behalf of all my colleagues.

The CHAIRMAN. Thank you, Mr. Keeney.

Mr. Gangloff, are you a little better now?

Mr. GANGLOFF. Much. Thank you. I have the right distance now.

The CHAIRMAN. Mr. Carver and Mr. McDowell.

As it relates to the issue of privilege—and we have heard a lot about it and our Counsels did speak to the White House and to their attorney. They are continuing to maintain that. It is my recommendation that we reach out to Mr. Kennedy once again through his attorney to ask him if he's going to continue, because we have issued a subpoena, but it's broad and within the rules that we have adopted or the agreement that we have adopted, that does not bind, on some of these issues, the Minority to accepting a view that—on the issue of privilege. We have already decided that we would review that if that issue was raised. It has been formally raised.

So my suggestion is that Counsels reach out once again—I don't think it's going to change anything—but reach out to Mr. Kennedy's counsel for the purposes of asking for the production of minutes that he may have in his possession or control that he took as it relates to the November 5, 1993 meeting attended by Mr. Kennedy at the office of Williams & Connolly.

If he persists through his attorney in declining to produce that, claiming privilege, then it would be my intent that we convene tomorrow at 11 a.m., inasmuch as we have postponed our other witnesses that were scheduled for 11 a.m. over until Monday to accommodate them, for the purposes of voting out a specific request. And that subpoena has been provided.

If Counsels have any suggestion between now and tomorrow at 11 a.m. requiring more specificity or whatever, we certainly will entertain that. I would hope the Counsels would work that out, but failing that, it would be the Chairman's intent to move forward and ask for a vote of the Committee with specificity for the production of these documents, subpoena and the production of the documents as described in the attachment A, which is to: "Produce any and all documents including but not limited to notes, transcripts, memorandum or recordings reflecting, referring or relating to the November 5, 1993 meeting, between and attended by William Kennedy at the offices of Williams & Connolly."

So that is my intent. Maybe we will be surprised. Maybe they will agree to the production, but if they don't agree to the production under limited circumstances, or agree to produce certain parts of it, I will leave that to Counsel to ascertain whether or not they changed their opinion. If they do not, tomorrow we will meet at 11 a.m. for the purposes of the Committee to consider whether or not the subpoena which I have mentioned shall be issued to Mr. Kennedy. If not, we stand in recess——

Senator SARBANES. Mr. Chairman, I want to speak on this.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I don't really think we will need a meeting of the Committee, but I think the suggestion that Counsel talk with Kennedy's counsel is a good one. It is my understanding—and I want to be clear here—that there is such a thing as an attorney-client privilege, which can properly be asserted; is that correct?

The CHAIRMAN. Certainly, under the law there is at absolutely established times, et cetera, where that can and should be recognized.

Senator SARBANES. And while I understand that in a political sense, people might attack the President for asserting the attorney-client privilege, he would be entirely within his legal rights to do so; would that be correct?

The CHAIRMAN. I believe so, certainly.

Senator SARBANES. So I take it the issue before us is what does the attorney-client privilege cover? Is that the question? I mean, there's no assertion that there's not an attorney-client privilege available. The question is what does it cover; is that correct?

The CHAIRMAN. Yes, and whether or not Mr. Kennedy in his position as Counsel in the White House attending a meeting outside, whether or not he can assert that privilege. Who did he represent?

Senator SARBANES. I understand that.

The CHAIRMAN. We raised that with Mr. Kennedy, and he said he's under instruction, so it would be my suggestion that we reach out once again through attorneys because we have from time to time run into what would appear to be insoluble, and we have come back with very real progress as it relates to our attorneys speaking to their counsel, but I think they have to understand if he continues to assert it, it would be the recommendation of the Chair that we indicate—that we send out a subpoena with greater specificity specifying exactly what we believe should be produced.

Again, I keep it open. If there are any modifications that would improve upon the identification of the subpoena, that's fine. And if we can't come to an agreement, it would be my intent that we go forward with the issuance of that subpoena.

Senator SARBANES. Now, the subpoena itself, I take it, if a party deems that the subpoena is requesting material that's covered by the attorney-client privilege, the party would then assert that privilege and not respond to the subpoena; is that correct?

The CHAIRMAN. That's correct.

Senator SARBANES. So the issuance of the subpoena does not determine the question of whether an attorney-client privilege exists.

The CHAIRMAN. That's correct.

Senator SARBANES. The party receiving the subpoena would be able in response to the subpoena to assert an attorney-client privilege. Whether he's entitled to it or not would be an open question. People may differ and there's been some difference here I guess over the extent of the attorney-client—and I gather from the conversation our attorneys had with White House Counsel, there are differences that exist among different people about the attorney-client privilege; is that correct?

The CHAIRMAN. That's correct.

Senator SARBANES. If Mr. Kennedy receives a subpoena, he could assert whatever legal theory he's operating under for an attorney-client privilege——

The CHAIRMAN. Sure.

Senator SARBANES. —with respect to the material.

The CHAIRMAN. Sure, absolutely.

Senator SARBANES. The suggestion that Counsel meet and discuss it with them and see if the matter can be worked out, I don't know if we need a meeting tomorrow. If the subpoena has to be issued, Mr. Kennedy would then be able to carry the attorney-client privilege issue into another forum other than this one, I take it; is that correct?

Mr. CHERTOFF. I think it comes back here because I think under the Resolution, the Committee would have to make a determination whether they accepted the assertion in this instance and if the Committee did not accept it, they would have to order the production and then that would ripen the issue for ultimately a resolution of that.

Mr. BEN-VENISTE. But clearly what's indicated here, it is quite a complicated question. It is one that is not a very settled area of the law and obviously which there should be further research on and briefing——

The CHAIRMAN. That's why we are going to stand in recess until 11 a.m. tomorrow. I am going to ask again the Counsels, who have

done heretofore yeoman's work and have produced incredible results at times, very unexpectedly, I might say, working together might be able to get it resolved without us moving forward. So we stand in recess until 11 a.m. tomorrow.

[Whereupon, at 12:15 p.m., the hearing was concluded.]

[Biographical sketch and appendix supplied for the record follows:]

BIOGRAPHICAL SKETCH OF GEORGE ALLEN CARVER, JR.

I joined the U.S. Army in January 1959, and earned a competitive appointment to the United States Military Academy, West Point in 1960. Upon graduating from West Point in June 1964, I was commissioned as a second lieutenant in the U.S. Army Infantry. In August 1989, I resigned from the Army as a captain and entered the University of Virginia School of Law. My various Army assignments included a tour of duty in the Dominican Republic in 1965–1966 with the 82d Airborne Division, and service in Vietnam in 1967–1968. Included among my military awards and decorations are the Silver Star, the Vietnamese Gallantry Cross with Silver Star, and the Purple Heart.

Upon graduating from law school in 1972, I joined the General Crimes Section of the Criminal Division, U.S. Department of Justice, as a trial attorney. In March 1976, I became one of the charter members of the newly established Public Integrity Section of the Division as a trial attorney, and in May 1982, was named Director of the Conflicts of Interest Crimes Branch of the Section.

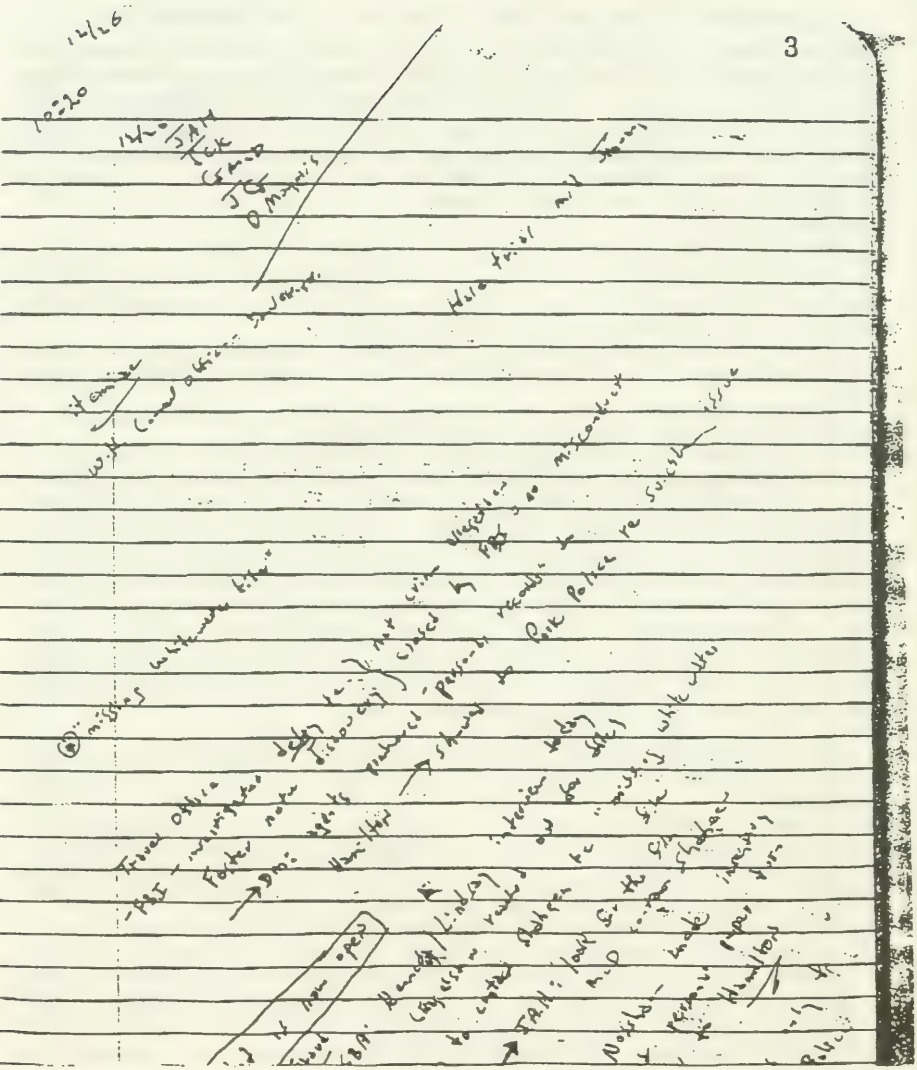
I left the Public Integrity Section in March 1988, to become a Deputy Chief in the Fraud Section of the Division. In May 1991, I became the Principal Deputy Chief.

In October 1995, I joined the Asset Forfeiture and Money Laundering Section of the Division as Senior Counsel to the Chief of the Section.

I have handled a number of significant cases for the Department. Included among them are the convictions of the following former Federal officials: A former Director of Central Intelligence for withholding information from Congress; a former Director of the Bureau of Engraving and Printing for conflict of interest; a former Assistant Administrator of the Environmental Protection Agency for perjury before two committees of Congress and obstructing proceedings of a third committee; a former Senior Assistant Postmaster General, U.S. Postal Service for false financial interest disclosure forms required by the Ethics in Government Act; a former Acting U.S. Marshal for false statements; a former Supervisory Special Agent of the FBI for false statements and declarations before a Federal Grand Jury; and a former Chief of Staff of the U.S. Department of Health and Human Services for conflict of interest.

The following list provides a number of examples of my responsibilities when I was the Principal Deputy Chief of the Fraud Section:

- Directly supervising the development of the prosecution resulting in the conviction in Washington, D.C. of a group of entities known as Bank of Credit and Commerce International ("BCCI") and the largest criminal forfeiture ever in the United States;
- Overseeing Fraud Section prosecutions in Atlanta, Georgia and Los Angeles, California, respectively, resulting in the convictions of a senior executive of the National Bank of Georgia, a failed bank in which BCCI had acquired an interest, and several individuals doing business with Independence Bank of Encino, California, another failed bank in which BCCI had an interest;
- Overseeing, at the headquarters level, operations of two major financial institution fraud ("FIF") task forces, the Dallas Bank Fraud Task Force and the New England Bank Fraud Task Force—my oversight responsibilities included, for example, supervising the task force directors, conducting on-site inspections of task force operations, reviewing and approving proposed indictments, and providing guidance and direction for various investigations;
- Supervising the deputy chief responsible for Fraud Section FIF investigations and prosecutions not assigned to one of the task forces;
- Chairing meetings of the Interagency Bank Fraud Working Group, a national level group composed of representatives of Federal law enforcement agencies and Federal financial institution regulatory agencies; and
- Participating in the development and coordination of FIF training programs and materials for Federal prosecutors and Federal investigators.



Memorandum

To : SAC, LITTLE ROCK (86A-LR-34847) Date 10/1/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
ET AL
FAG-SBA
OO: LITTLE ROCK

On 9/24/93, a meeting was held to discuss captioned matter at the United States Attorney's Office (USAO), Eastern District of Arkansas (EDAR). Present from the USAO were United States Attorney (USA) PAULA CASEY, Assistant United States Attorney (AUSA) MICHAEL JOHNSON, Chief of the Criminal Section, and AUSA FLETCHER JACKSON. Present from the Bureau were ASAC WHITEHEAD, SA REIGN, FA HALL, and writer.

The meeting was held to accomplish two objectives. The USA wanted to determine if she would have to recuse herself from the matter due to her close friendship with JIM GUY TUCKER, SETH WARD, and STEPHEN SMITH. The Bureau wanted to voice its objection to the manner in which AUSA JACKSON was limiting its investigative efforts, conducting investigation on his own, and to press for all documents of Madison Guaranty Savings and Loan (MGSL) to be obtained from the Resolution Trust Corporation (RTC).

After hearing the estimation of both writer and AUSA JACKSON on the involvement of TUCKER, WARD, and SMITH, USA CASEY advised she would have to recuse herself and only had to decide the best time to do so. She referenced claims made by subject DAVID HALE in media outlets that she was being unfair due to her political or other affiliations. While she resented those accusations and realized recusing herself might be misinterpreted by some as giving merit to HALE's accusations, CASEY felt she must not hear any details concerning the above individuals. However, she saw no immediate need to publicly advise of her recusal and preferred to wait until a more opportune time from a public relations standpoint. AUSA JOHNSON also discussed the possibility the Department of Justice would take all or part of the case due to the mention of BILL CLINTON by HALE.

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(2)

FBI-00001545

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Writer recounted past experiences with the RTC which lead him to place very little trust in its ability and motivation, especially in captioned matter. He also pressed for support for obtaining all MGSL documents, beginning with the microfilm and microfiche. Due to the promise RTC made to AUSA JACKSON to provide its MGSL referral by 9/30/93, the USAO felt it was desirable to wait until at least then to decide whether to force the issue of compliance of a grand jury subpoena for the film/fiche. The advantages of having all of the records was reviewed with the USAO, and the present problems being caused by AUSA JACKSON limiting what was taken in the search warrant at HALL's business were noted as an example of a disadvantage. The poor job AUSA JACKSON was doing of drafting subpoenas and keeping a record of his own investigative efforts was also mentioned, as well as his failure to keep the case agent adequately informed of the results of that investigation.

After those items had been covered, USA CASEY excused herself to allow SA REIGN, FA HALL, and AUSA JACKSON brief him on the specifics of the MGSL matter and possible involvement of TUCKER, WARD, and SMITH. ASAC WHITEHEAD and writer also excused themselves from the meeting.

United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

October 27, 1993

Ms. L. Jean Lewis
Criminal Investigator
Resolution Trust Corporation
4900 Main Street, Suite 200
Kansas City, MO 64112

Re: #7236 Madison Guaranty Savings and Loan
Criminal Referral Number C0004

Dear Ms. Lewis:

I am writing at the request of the Office of Legal Counsel, Executive Office for U.S. Attorneys of the U.S. Department of Justice to let you know the status of this referral.

As you know, this referral was reviewed by the Criminal Division of the U.S. Department of Justice at the request of the previous United States Attorney for the Eastern District of Arkansas. The matter was concluded before I began working in this office, and I was unaware that you had not been told until I was contacted by the Office of Legal Counsel. After receiving the call from Legal Counsel I reviewed the referral, and I concur with the opinion of the Department attorneys that there is insufficient information in the referral to sustain many of the allegations made by the investigators or to warrant the initiation of a criminal investigation.

Although I am declining to take further substantive action on this referral, my decision does not foreclose future prosecutions about the matters covered by the referral or related matters in the event that my office and the FBI are given access to records or information indicating that prosecutable cases can be made.

Sincerely,

Paula J. Casey

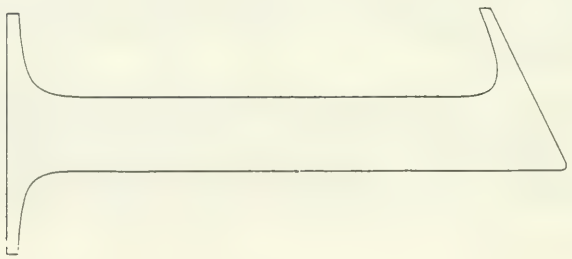
PAULA J. CASEY
United States Attorney

cc: Debra Westbrook
Office of Legal Counsel

Alan Cairns

1/19/93 Jerry M. Davis

- a fax on ... is concerned when we heard what SBA did ... we tried to undo the damage ...
- Don got to believe the UH Council has done an incredibly stupid thing ...
- Other kind of independence ...
- witnesses to follow



TTY-0000157

Date: Friday, August 13, 1993 8:21 am
From: CRM02(CARVER)
Subject: Assoc AG's Meeting at the RTC

Larry --

From a sketcy report of the Associate AG's meeting with RTC Professional Liability Section staff a few days ago, it appears that he got to know some of those folks when he was retained as fee counsel. This led to the informal meeting.

In response to an inquiry from RTC staff, he announced that a Special Counsel has been selected, but the necessary FBI background investigation has not been completed. He told the RTC staff, who had urged that a Special Counsel be appointed, that the Special Counsel could be publicly named in September. (Is Gerry Stern the selectee? If not, who has been selected?)

The Assoc AG mentioned that the President wants all judge slots filled within a year. He also mentioned that if the RTC should receive demands for document production from a U.S. Attorney's office which the RTC believes is unreasonable, the RTC should feel free to let him know. (In response to this invitation, one of the RTC senior staffers told the Assoc AG that the RTC believes that it has an excellent relationship with the DOJ. The RTC staffer commented that only one U.S. Attorney (the U.S. Attorney in Denver) had been difficult to deal with, but he has left the USAO.

The Assoc AG emphasized that the DOJ is interested in working harmoniously and productively with the RTC.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

THURSDAY, DECEMBER 7, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 11:05 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chair.nan of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. Today, it was our intent to review a request for subpoenas that would be issued. It was the intent of the Chairman, as it relates to Mr. Kennedy and others, to take up the issue of subpoenas and what the Committee had a right to expect from those witnesses.

I will not attempt to recount Mr. Kennedy's responses. They are in the record to our request for information and particularly for the Committee's request for his diary as it relates to the November 5th meeting that Mr. Kennedy attended with others at the law offices of Mr. Kendall. I think it's Williams & Connolly?

Mr. GIUFFRA. That's correct.

The CHAIRMAN. Last evening, at 10:40 p.m. or thereabouts, a letter, which we will make available, was sent to me and to Senator Sarbanes as Chairman and Ranking Member.

Let me read it. It's a very short letter.

Dear Senator D'Amato and Senator Sarbanes,

I believe that we have devised a framework for the Special Committee's questioning of White House witnesses which will afford the Committee the right to acquire the information it seeks without invading or waiving privileged communications. Jane Sherburne and I respectfully request an opportunity to discuss our proposal with you prior to the Committee's schedule meeting. If 10 a.m. would be a convenient time, we would be prepared to meet with you in a place you designate or we would seek another convenient time for both of us.

Sincerely,
David E. Kendall

Copies were sent to Mr. Chertoff and Mr. Ben-Veniste.

We have had that meeting this morning at 10 a.m., Senator Sarbanes, myself, Mr. Kendall, Ms. Sherburne, and we are, at the present time, entertaining and reviewing the proposals that are being put forth by Mr. Kendall with our Counsel, to ascertain whether or not this will satisfy the Committee's desire to ascertain the information that we believe is necessary to go forward.

So, in fairness to all concerned, to this Committee, to the legal requirements that we want to be responsive to as it relates to the issues of privilege, and as it relates to our necessity of gathering information, particularly that which is not protected, we are exploring the possibility of resolving this. Those meetings are taking place as we speak.

In addition, we will be asking for advice from Senate Legal Counsel. We have already put forth certain things to the Senate Legal Counsel, and we're going to review that.

Are there any other statements?

Senator Sarbanes, would you like to make a comment with respect to that? I think that's a fair summary of where we're at.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. I really have nothing to add to what you have said, Mr. Chairman. We did have this meeting, as you indicated, in response to the letter. Discussions are now underway and hopefully we'll have a satisfactory resolution of the matter.

The CHAIRMAN. Do any of the other Committee Members wish to make any statements?

[No response.]

We are reviewing this in an attempt to see if we can't come up with a satisfactory methodology of getting that information which the Committee feels it's entitled to, yet recognizing where the issue of privilege may or may not be asserted.

So that is taking place.

We will stand in recess until the call of the Chair. I don't know whether we will come back later this afternoon or tomorrow. If we resolve this matter, there will be no necessity to come back this week. If we don't, we may have the issue of having to vote out subpoenas. At that point in time, I would ask for the Committee to come back.

In the meantime, we will be seeking advice and counsel from the Senate Legal Counsel as it relates to the issue of subpoenas, et cetera, and methodology for dealing with questions that may arise as to their appropriateness.

If there are no further comments to be made by any of the Members, we stand in recess until the call of the Chair.

[Whereupon, at 11:10 a.m., Thursday, December 7, 1995, the hearing was recessed subject to the call of the Chair.]

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

THURSDAY, DECEMBER 14, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 11:11 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING COMMENTS OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

I am going to request a 10-minute recess, and I will tell you why. I will say this to you, I have come not to be surprised, but this is, I think, highly irregular.

At 10:51 a.m., apparently, a fax was sent to Mr. Chertoff from the White House. At 10:51 a.m., purportedly, it was delivered to me by someone from the White House, handed to me literally 3 minutes ago at 11:10 a.m., in which they set forth another proposal to deal with this, and it is signed by Jane Sherburne, carbon copies to Mr. Ben-Veniste. I am going to ask to meet with Counsel to see if this is really anything new, or if it is the basis that we are prepared to reject, but I will review it and we will start the hearing in 10 minutes.

I will say this to you, I do not believe this is proper. This does not in my opinion evidence good faith, to send it at—even send it, not even tell us that they had something, did not discuss anything I don't believe. Did they, Mr. Chertoff?

Mr. CHERTOFF. Mr. Chairman, we had discussed this at 5 p.m. yesterday evening, and this is the first communication we received back after that discussion concluded with no resolution.

The CHAIRMAN. This draws me to begin to believe that more and more what some people are attempting to do is just to delay, delay, and they are not dealing with us in what I would think is a fair way. If you really were interested in something, then it would seem to me you don't wait from 5 p.m. until just literally minutes before and then fax over a proposal.

However, suspecting that this is really disingenuous, in the manner certainly in which it was communicated to us, I will ask that we take a 10-minute recess and the Majority will review this and the Minority can review it and if there's any change in our positions, we will advise. If that means that we have to go forward, why, we will reconvene and go forward and we can all state our positions.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes.

Senator SARBANES. Can I be recognized?

The CHAIRMAN. Certainly, Senator Sarbanes.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, if this letter is going to be characterized as a delay, I want to put in the record at this point the letter sent yesterday by Ms. Sherburne with respect to the other four subpoenas that were ostensibly going to be issued this morning.

Now, we will recall at yesterday's hearing, we put up on the machine and then there was asserted that we weren't getting access to this material and therefore further subpoenas were going to be considered this morning with respect to those matters.

Ms. Sherburne has written a letter to Mr. Chertoff, and I just want to quote it:

Dear Mr. Chertoff:

Your public announcement today that the White House is withholding four additional documents on privilege grounds is disingenuous.

First, we have never asserted privilege in connection with these documents. Rather, my letter to you of November 2, 1995, consistent with the practice we have followed since the creation of the Special Committee, we alerted you that we were "prepared to work with you to determine whether we can accommodate the Committee's need for any of this material."

Second, I spoke with Bob Giuffra shortly after receiving his November 27, 1995, letter requesting these documents and explained: (1) that we were prepared to give you the January 5, 1994, letter from James Hamilton to President Clinton; (2) that we would be willing to permit your review of the December 20, 1993, *New York Times* article reviewed by the President; and (3) that we had learned that Joel Klein's notes were prepared after the subpoena's cut-off date, so they were unnecessarily identified to you as responsive. I told Mr. Giuffra that I would have to get back to him with our position regarding the November 10, 1993, draft chronology prepared by David Kendall.

Third, in my letter to you dated December 4, 1995, I suggested that we meet at your convenience to review these matters. For whatever reason, you chose not to respond.

Issuing subpoenas for these materials now is a partisan tactic entirely unwarranted in view of our history of successful accommodation when such matters have arisen in the past.

Consistent with my earlier conversation with Mr. Giuffra and in accordance with our discussion this afternoon: (1) we have agreed to provide the Hamilton letter to the Committee, and (2) you will work with us to schedule a time for you to review the *New York Times* article with the President's handwriting. We agreed that Joel Klein's notes are nonresponsive. We are not providing Mr. Kendall's chronology as it constitutes his work product. If the Committee believes it has a need for this material, we encourage you to consult with Mr. Kendall.

Finally, we remain prepared to consider meaningful proposals to resolve the Committee's interest in the November 5, 1993, meeting. We continue to believe that the proposal set forth on pages 38–39 of Mr. Kendall's submission, which you rejected in our discussions this afternoon, should be entirely sufficient to resolve the Committee's need for this information.

Mr. Chairman, with all due respect, it seems to me there is an effort here to provoke a confrontation. These matters were thrown up on the machine yesterday. There was a big assertion that we had to issue further subpoenas. It was asserted then, of course, off of that in the press this morning that these items are being withheld and so forth and so on.

Now it is my very strongly held view that all of these matters can be worked out without a confrontation, including the basic matter of the November 5th meeting. I have not had an opportunity to review Ms. Sherburne's letter. Frankly, I think it ought to take more review than 10 minutes, but I mean there's been a consistent rush to judgment here. There's been a constant assertion that there's not a valid claim.

I was very interested in the article that appeared in this morning's Washington Post, quoting legal experts. Let me just quote to you——

The CHAIRMAN. Senator, if I may.

Senator SARBANES. I'll take just a second. I think it's important that these be on the record, and I think the Member has put them into the consideration.

The CHAIRMAN. Sure. I want to respond first as it relates to the question that you just raised. The fact of the matter is that yesterday, Mr. Chertoff did speak to Jane Sherburne and indeed three out of the four matters were agreed to. And I don't know if you are aware of that, if she advised you of that, to suggest that we were going to go ahead and push for subpoenas in this case is just not correct.

Senator SARBANES. No, no. You said yesterday you were going to go for subpoenas.

The CHAIRMAN. Yes, that's correct.

Senator SARBANES. And Ms. Sherburne——

The CHAIRMAN. Thereafter, not before, thereafter, and we left it open, that the Counsels would continue to work, and I said specifically that we were going to consider this one issue, but as it related to the others, I would hope that we could continue to work and they did come to an agreement, Mr. Chertoff and the White House Counsel, as it related to three of the four and there is one open area. There is no intent of the Chair to go forward, as long as in good faith, as it relates to that situation, we continue to make progress. I hope that would answer that one question.

Senator SARBANES. Well, it does not answer it, Mr. Chairman, because it was raised yesterday with a clear import that these matters had been denied, and Ms. Sherburne asserts in her letter to us, and I quote:

I spoke with Bob Giuffra shortly after receiving his November 27, 1995, letter requesting these documents and explained: one, that we were prepared to give you the January 5, 1994, letter from James Hamilton to President Clinton; two, that we would be willing to permit your review of the December 20, 1993, New York Times article reviewed by the President; and three, that we had learned that Joel Klein's notes were prepared after the subpoena's cutoff date so that they were unnecessarily identified to you as responsive.

I told Mr. Giuffra that I would have to get back to him with our position regarding the November 10, 1993, draft chronology prepared by David Kendall.

Yet yesterday those things are put up on the machine and it was asserted, well, we are having difficulty obtaining this material and, therefore, we are going to issue a subpoena.

Now, you are telling me, well, you are not going to issue the subpoena, but this subpoena with respect to these matters was never raised with us. It was sprung here yesterday morning, I think as an added weight toward the confrontational scenario, and I think that that's not doing business the way this Committee ought to be doing its business. That's the statement, very simple and very clear on these matters.

I don't understand in light of these representations contained in this letter why this issue was raised yesterday morning and those matters were thrown up on the machine.

The CHAIRMAN. Well, I will give you the short of it. The fact of the matter is that Ms. Sherburne did not come to an agreement, and indeed, it was only after yesterday's announcement that we would go forward and consider the issuance of subpoenas that they came to an agreement. That's the fact.

Senator SARBANES. Well——

The CHAIRMAN. Second and more importantly, I do not believe that this Committee is being treated fairly when we get a proposal literally 9 minutes—the fax was sent at 10:51 this morning in regard to a methodology of attempting to avoid what will be a confrontation.

I was hoping and suggested and left a day open for them to meet and to negotiate in good faith. If their last contact was at 5 p.m. last evening and then we get this in the morning, it seems to me, or at 6 p.m., it seems to me that that is not the kind of good faith negotiation that we're looking forward to. However——

Senator SARBANES. Let me——

The CHAIRMAN. —if we are going to characterize.

Senator SARBANES. You are the one who is characterizing that it is not a good faith negotiation.

The CHAIRMAN. I think my friend and colleague characterized by way of Ms. Sherburne's letter, which inaccurately, according to staff, represents the facts.

The facts are that there was no agreement and it was only after the Committee said well, we'll issue subpoenas that we have this agreement. This agreement could have been reached and should have been reached a long time ago. And this is the same kind of thing that we get here today, when 9 minutes before we get a faxed proposal to us, I would suggest that's not dealing with the Committee the way it should be.

Senator SARBANES. Let me address that issue. First, let me put the first one to rest. Ms. Sherburne asserts that in the conversation with Giuffra, she——

The CHAIRMAN. I understand her assertion, Senator, and let me say this to you. You have read the letter twice, that's fine. Let's not read it or rehash it a third time.

Senator SARBANES. All right. But I want to underscore that assertion.

The CHAIRMAN. That's her assertion, not Mr. Giuffra's.

Senator SARBANES. She said it was consistent with earlier conversations with Mr. Giuffra. Let me turn to the letter we have received today, just the point of whether it's a good faith response.

The CHAIRMAN. All right.

Senator SARBANES. As I understand it, the discussion with Counsel yesterday was held from about 5 p.m. until about 6:30 to 7 p.m. in the evening.

The CHAIRMAN. From 5 to 6 p.m.

Senator SARBANES. All right.

The CHAIRMAN. Well, I don't really want to be nitpicking this.

Senator SARBANES. No, be nitpicking. We need to be accurate here. We need to be very accurate, because assertions are being made that aren't sustained by the record, and if the conversation ended at 6 p.m., I think that ought to be put out here on the record. I don't want to assert it went until 6:30 p.m. if it didn't go until 6:30 p.m.

Second, as I understand it, this issue was discussed. They went back and then tried to work out a proposal. I assume that proposal couldn't be worked out immediately, and I think it's reasonable to assume that they worked on it late into the night, and overnight, and into the morning, and now we have been sent this letter.

Your reaction to that is that this is an unfair tactic to send this letter to us shortly before the hearing begins. For all I know, it was the best they could do in terms of putting together their proposal and submitting it to us.

Obviously yesterday, they discussed a certain approach which I take it Mr. Chertoff rejected or found unacceptable, although my own view is it was a forthcoming proposal, and they went back and tried to work on another proposal. Now, you have proposed to recess for 10 minutes to consider it.

Now, Mr. Chairman, we have prepared a brief, and I ask consent that it be included in the record, on whether the Committee should vote to seek enforcement of the Kennedy subpoena, which is a careful analysis, I think, of the law and the factors involved in this matter. This is a serious and complicated issue, and the Committee ought to treat it as such before it moves to a confrontation.

I was interested in the comments in the paper this morning:

New York University law professor Stephen Gillers, an expert on legal ethics, said he initially had been skeptical of the President's invocation of attorney-client privilege but changed his mind after reading the briefs.

"The oddity here is that Clinton is in both sets of clients, in one way with his Presidential hat on and in one way as a private individual. The lawyers who represent the President have information that the lawyer who represents the Clintons legitimately needs and that's the common interest," he said. "It's true that Government lawyers cannot handle the private matters——"

The CHAIRMAN. Senator, if I might.

Senator SARBANES. Let me just finish the quote.

The CHAIRMAN. But Senator, you are going to be making these assertions as it comes to the Committee's consideration of whether or not, and I am going to let you finish, but then I think we should take that recess, and certainly I understand you will be raising these assertions.

Senator SARBANES. No, I want to raise them before the recess on the assertion that a 10-minute recess to consider a proposal is not adequate when you have these kinds of comments from recognized

legal experts about the nature of the privilege it's been asserting which, it seems to me, fully underscores the need for the Committee to reach an accommodation.

The CHAIRMAN. If Counsel believes that the proposal is significantly different or goes into areas which would require additional time, why, I will make that announcement. So we will review it, we will look at it, and if we need more time, I will request that additional time, if it is something that we believe there is a possibility of us accepting.

So what I am asking is that we have a short recess, we will consider this, and we will then report back whether or not we are in a position to give further consideration or whether we see this as rehashing old grounds that have been rejected heretofore.

Senator SARBANES. Mr. Chairman, let me just say I think this memorandum that has been prepared and that has just been included in the record ought also to be reviewed. I mean these are serious issues that are being raised here. To treat them lightly simply lends credence to what is at foot here, simply an effort to provoke a constitutional confrontation.

The CHAIRMAN. That is not fair.

Senator SARBANES. That is my perception, I must say to the Chairman, on the basis of——

The CHAIRMAN. But you know that would ignore the fact that we have spent and Counsel have spent many, many hours reviewing the proposals, discussing the various proposals with others, even before this as put forth, as proffered forth, we have reviewed this, researched this as well. So that would ignore that.

Having said that, I'm going to recognize Senator Simon and then we are going to have a brief recess.

Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Just a question, Mr. Chairman, on procedure. I notice that in Jane Sherburne's letter of December 13th, she says: "In my letter to you," talking about Mr. Chertoff, "dated December 4, 1995, I suggested that we meet at your convenience to review these matters. For whatever reason you chose not to respond." Are we declining as a procedural matter to meet with the White House to try and work these things out?

The CHAIRMAN. No, that has not been the history of our attempting to deal with this. But I would say to you that when we get a letter dated today's date, faxed from the office that it was sent to at 10:51 a.m., don't receive it until shortly after—had it into our possession after the hearing was scheduled to open, that leaves the Chairman wondering what is the intent. Why didn't we get this, why wasn't there a phone call last evening to Mr. Chertoff or to Mr. Giuffra, indicating to them that they had a new proposal, and indeed, I'am going to ask them——

Senator SARBANES. They may not have had it at that point.

The CHAIRMAN. I am going to ask them to review this proposal and to ascertain whether it is any different than that which has been discussed heretofore. I do not know whether this proposal is different than any that has been rejected and that is the purpose of this short recess, to seek their counsel.

Senator SIMON. I understand that, Mr. Chairman, and I am not talking about that, but I do think if we can avoid confrontation, that is what we ought to be doing, and the letter from the White House does indicate a willingness to meet and sit down and work things out. I think if that is possible, we ought to be doing that.

The CHAIRMAN. Well, we are going to examine the new proposal to ascertain whether or not it contains any differences that would make it possible for us to go forward without the issuance of a subpoena in terms of commanding that the documentation that we requested be produced. So we will take a short recess and then we will return in 10 minutes.

[Recess.]

The CHAIRMAN. The Committee will come to order.

We have reviewed the latest proposal from the White House with our Chief Counsel, Mr. Chertoff. It is Mr. Chertoff's recommendation, and I concur, and all those Members who were in on the briefing concur, that while this touches on some new ground, there are certain conditions as spelled out in the letter that we just received, the proposal that we just received, that make it impossible for us to accept these conditions. I'm going to ask Mr. Chertoff to touch on them briefly and then to outline the status of the dispute and address the question of the legal briefs and then open the matter to debate.

When we have a quorum, there will come an opportunity—the Clerk has indicated that we do have a quorum; is that correct? For the record, will the Clerk call the roll.

[The roll was called.]

The CHAIRMAN. For the purpose of the record, we do have a quorum.

Mr. Chertoff, would you report to the Committee as it relates to what you have found and as it relates to the problems of accepting this proposal.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, let me put the context on this by indicating maybe the most important element in evaluating a proposal like this, which is the matter of time. Time is the enemy here, because we are running against a session that is coming to a close, and as I think the Committee is well aware, in order to proceed to enforce a subpoena in court, the Senate needs to be in session so the matter can be taken up on the Floor.

This set of issues involving whether the notes of this meeting would be made available to the Senate was not raised for the first time yesterday or even last week. It has been discussed with lawyers for the Committee and the White House for a period of weeks. This new proposal here, portions of which accept a proposal which I made in a meeting approximately 2 weeks ago and portions of which are new conditions which may not be acceptable, was something that could have been discussed and could have been made available 2 weeks ago when I put it on the table.

Let me also say that in evaluating this proposal, there has been a fundamental error of law that has been advanced before this Committee as the reason why the White House and the President have resisted making these notes available. Repeatedly the White House in its written submissions and the President even on tele-

vision in his interview yesterday have said that the only concern they had about turning the notes of this meeting over was that by doing so under subpoena, they would be waiving the privilege with respect to all other conversations.

I searched in vain in Mr. Kendall's submission for a single case that would support that proposition, and knowing what a fine lawyer Mr. Kendall is, and his firm is, I suspected when I found no such case that that was because the law was not as it was being suggested it was.

To the contrary, the law is the prevailing law in the courts of the United States, is that if material is turned over under subpoena, under court order, whether it be to a court or to a Congressional body, that does not waive the privilege with respect to other meetings or other transactions. And therefore, the principal argument that has been raised in objecting to this request for the meeting notes turns out to be an argument that is without foundation in the law.

Let me now briefly talk about the proposal that is before us. First of all, there are five conditions that are attached to the turning over of the notes of the meeting. Two of these conditions are conditions to which we indicated a willingness to agree 2 weeks ago. That's condition 2 and condition 3.

Condition 2 says that the Committee would agree that it would not argue in any forum as a basis for obtaining information about other Counsel meetings or for any other reason that any privileges or legal positions had been waived by permitting inquiry into the November 5, 1993, meeting.

In a nutshell, what it means is this. The Committee would agree that by turning over the notes to us the White House is not waiving its ability to assert privilege in other cases or in other conversations if it is applicable. Not only do we agree to that, I suggested that 2 weeks ago. That is a position which would basically leave till days to come any contention or any dispute over other meetings.

I made it clear in the meeting to the White House that we were not surrendering our right to pursue inquiry to other meetings between White House Counsel and private counsel. To the contrary, I mean to be candid with them, I suggested that we would very likely want to see other contacts between private counsel and White House Counsel because that is exactly what is the subject of the investigation.

The other condition that we talked about as being acceptable at the time was that the Committee would limit its testimonial inquiry about this meeting to the White House officials who attended it. In other words, we would ask questions of Mr. Kennedy and Mr. Lindsey. We would not seek to question Mr. Kendall.

There are three new conditions, however, that raise problems. First, and maybe the most troubling, is the condition that the Committee would secure the concurrence to these terms of other investigative bodies, including the Independent Counsel, other Congressional committees with investigatory or oversight interest in the Madison/Whitewater matter, the Resolution Trust Corporation and its successor, and the Federal Deposit Insurance Corporation.

I have to say that had this been raised 2 weeks ago, perhaps we could have addressed the possibility of doing that, although there are serious institutional problems with our going to the Independent Counsel and trying to get him to agree to something so that we can get documents. Likewise, there's a serious problem with our going to the RTC or the FDIC and trying to force them to agree to something so that we can get documents.

More important, it is simply not possible that we could satisfy this condition promptly and therefore, to accept this condition would at the very least inject tremendous delay into our ability to resolve this issue.

Another condition is condition 1. The Committee would agree that the November 5, 1993, meeting was a privileged meeting. I don't know that we could recommend that the Committee take that position, since contrary to the suggestion made, our very intense study of the law over the last couple of weeks has suggested to us that on the facts here—and I'm not talking about the generalities that commentators reflect upon in the newspapers—but that on the specific facts of the matter here, there is no privilege, that in fact having reviewed Mr. Lindsey's sworn testimony, Mr. Lindsey last year flatly denied having involvement in Whitewater related matters at the White House for the purposes of giving legal advice. That is contrary to the position that he is taking in the newspapers here, but his sworn testimony last year is very damaging to a claim of attorney-client privilege in this meeting.

I don't know that the Committee could agree to condition 1——

Senator KERRY. Could you explain that?

Mr. CHERTOFF. I would be happy to, Senator. The position that has been recently taken by Mr. Lindsey in explaining why his presence at the meeting in his capacity as White House Policy Adviser, White House Senior Adviser, the reason he explains that wouldn't interfere with this joint defense privilege is because he says that his work on the Whitewater matter at the White House was in connection with giving legal advice. But Mr. Codinha, who was Counsel to the Majority last year, asked precisely this question of Mr. Lindsey last year in his deposition, which is contained at page 39 of his deposition.

Mr. Lindsey said no, he was not involved in dealing with the Whitewater matters at the White House, the receipt of the confidential information in order to give general advice to the President. He says at line 21:

> So it was not general advice to the President. There was no "advice" involved in this. This was simply, if questions like that came to the White House, most likely they would come either directly to me because people who would raise the issues in the press would know that I was a person who dealt with that, or our press office or someone else in the White House who got the inquiry would usually come to me with it because I dealt with it.

Over and over again last year, Mr. Lindsey made it clear his involvement with Whitewater was press oriented. That is inconsistent with the position taken now that he was giving legal advice at the time and that was the capacity in which he was at the meeting.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Could I just inquire—I want to try to understand this—why is it inconsistent? I mean the essence of the privilege at-

taches not to whatever it was or might have been that Mr. Lindsey was saying. The essence of the privilege attaches to the nature of the meeting, to who called it, to where it was, to what its purpose was. And it's irrelevant what Mr. Lindsey or in fact any other person at the meeting may have had as their role description. What is relevant as to the definition of privilege is what the substance of the meeting was and who called it.

Now if an attorney, a personal attorney to the President, calls a meeting and the meeting is at the personal attorney's office. And as personal attorney he is trying to get current as to all aspects of what may have gone on, how is it that whatever role Mr. Lindsey may or may not have played denies the existence of that privilege?

Mr. CHERTOFF. I think most respectfully, Senator Kerry, the law is that the privilege does not protect fact-finding by the President's lawyers or anybody's lawyers. What the privilege protects is communications from the client to the lawyer, and then there is some additional protection for legal discussion among the lawyers themselves. Who is invited to the meeting is at least in the courts the very essence of the question that is always being examined to determine whether a privilege exists.

Senator KERRY. It is particularly interesting that in this letter from the White House, in their offer, they are actually offering to turn the notes over, so the contents of the notes themselves are obviously not particularly disturbing to them because they are prepared to give those to the Committee.

But in terms of the arguments about the privilege, take, for example, the case that someone is at the meeting and the attorneys are talking and private counsel may even offer some statement about strategy or might offer a statement about sort of an interpretation. If Mr. Kennedy or someone else had written a note as to that observation, in effect, by getting access to that note, you are getting a back door opening to the privileged communication itself, and that's really the issue. But I think it's obviated by virtue of the fact that they are offering to give you the notes.

Mr. CHERTOFF. Well, I think that the issue that is presented by the letter is what are the conditions. Conditions 2 and 3, which are ones we suggested some time back, would give the White House the protection it needs. Condition 1 appears to be an agreement that is more significant in terms of its public consumption than any legal significance, and condition 5, which is the one I have not addressed, would require that the Committee change its procedures or adopt some new unspecified procedures in connection with dealing with these issues in the future.

Senator KERRY. Let's deal with issue 1 first. Does the Committee want to see the notes? I thought the essence of our subpoena was to be able to see the notes.

The CHAIRMAN. That is correct.

Senator KERRY. So if the notes are being offered to us, it seems to me that's relatively significant.

The CHAIRMAN. I would say to the Senator that the notes are not really being offered, that we have put forth to the White House, and I believe it addresses it in a very meaningful way, the proffer of number 2 and number 3, because I do believe, whether it be the President or anybody else as it relates to his individual lawyer, he

has a right, attorney-client privilege should be protected and there should be no strings attached to that one way or the other. I also believe that as it relates to those individuals who work in governmental capacities, we do have a right to the information that would be contained or might be contained in Mr. Kennedy's notes, and we have a right to obtain that with no strings attached.

So while I am willing to concede points 2 and 3 that the Committee would limit its testimony to those White House officials who attended, absolutely, I don't have any problem with not asking Mr. Kendall or getting into his privileged relationship with the President, but certainly as it relates to the conditions that are attached, number 1, number 4, and number 5, they are unacceptable.

Senator KERRY. The Senator just said that they are not really offering to turn over the notes. Now as I read this, it says specifically: "We would be willing to turn over to the Committee the notes taken by Mr. Kennedy." That seems to say to me they are willing to turn over the notes.

The CHAIRMAN. No, I don't see it that way. I see that there are a series of conditions here that the Committee would secure in number 4. I would say if they have no objection to turning over the notes, turn them over but don't put under "the Committee would secure the concurrence to these terms of other investigative bodies"—Why? Why?—"including the Independent Counsel."

My gosh, I had a tough enough time trying to get hold of them to find out if we could set up a date to come in because of his backlog to speak with Senator Sarbanes and myself on some other matters in which we are pressing, other Congressional committees with investigative or oversight interest. Why would we put this? Madison/Whitewater, the Resolution Trust Corporation. I don't see this.

And number 5——

Senator SARBANES. It is a perfectly reasonable condition.

The CHAIRMAN. I don't believe it is.

Senator SARBANES. Well, I mean they want to comply with the Committee but they don't then want to waive the privilege with respect to other fora. That's a simple matter.

The CHAIRMAN. I am not suggesting a waiver of anything other than to produce documents that are absolutely required, that requires no waiver, and that is the point. The point is we have not raised this issue to say that this is privileged. I think it is a specious issue that's being——

Senator SARBANES. None of the experts agree with you, Mr. Chairman.

The CHAIRMAN. Well, I wouldn't say none of them, and I think it may come to a point where we will determine and we will find out whether we are entitled to this information, but again, I believe that paragraphs 2 and 3 are absolutely acceptable. We have put them forth, we suggested to them, what, 2 or 3 weeks ago and they would be acceptable under those circumstances.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Mr. Chairman, I concur with you, condition 1, we have met. I think we ought to move on. Under condition 1, the

letter that came from the White House, the Committee would agree that on November 5, 1993, the meeting was a "privileged meeting." Why should we agree to something that we dispute and we don't believe is true at all? I mean, I think that goes to the heart of it.

The last thing, under item 5 here, "pursuant to section 2(c) of Senate Resolution 120," listen to this if you would, "the Committee would adopt procedures to insure that any interest the Committee may develop in other matters covered by the attorney-client privilege for the President will be pursued, if at all, on a bipartisan basis." Can you imagine that? That gives the other side a complete veto of anything we can do. I have never heard of that.

Senator KERRY. That is not what it says.

The CHAIRMAN. This Committee was created by a bipartisan vote of 96 to 3 in the Senate. We have been fair, we have been impartial, we have been thorough, and we have a responsibility under the Constitution to fulfill our oversight role as an Oversight Committee as duly constituted, and I don't intend to change that or to submit to the change suggested in paragraph 5. I don't think that we should give up those rights and responsibilities and should not ask the Independent Counsel or any other investigative committee to voluntarily fail to pursue as vigorously as possible these responsibilities, and I think we are taking the appropriate action.

So while I am willing to concede that because we have developed 2 and 3, I would reject and recommend rejecting the other strings which are being attached.

Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Mr. Chairman, the part that is particularly outrageous about the White House offer is that the Senate Banking Committee, they say to seek to control the Independent Counsel, or for that matter the House Banking Committee and Chairman Leach. That is what they are saying that we have to do. In getting these documents this Committee has no authority over the Independent Counsel or Committees in the House, and the attached condition, they well know we can't meet. I have to conclude that this offer is nothing more than a delaying tactic.

I want to ask Senator Sarbanes, or Senator Dodd, or any other Senator on that side, do they really think this Committee is empowered to get agreements limiting the scope of what the Independent Counsel does?

The CHAIRMAN. Well, we could have an hour——

Senator FAIRCLOTH. I don't want to debate on it but——

Senator SARBANES. That is not what the condition says.

The CHAIRMAN. It is a rhetorical question.

Senator SARBANES. If we want to discuss it, we need to state it accurate. That is not what it states.

The CHAIRMAN. Let me tell you the Chairman's concern. The White House understood that we were very willing to deal with the legitimate issue of privilege and privacy as it relates to an attorney and his client. As a matter of fact, we have proffered forth those elements expressed in this letter. If they were able to accept this now, why wasn't it done 2 weeks ago? Why was it when it only

comes down to the crunch, when it comes to the issuance of subpoenas, that we get that kind of cooperation?

Indeed, I have talked to Mr. Giuffra and he tells me that that is not an accurate representation that Jane Sherburne suggested in her letter, and that she did not accept his offer as put forth. Again, it was only when we said that we would take up a subpoena that they come forward and agree to three out of the four positions, and the fourth we say fine, we'll discuss it and see if we have a way of resolving it. So that's the problem that the Chairman sees.

I am going to ask Mr. Chertoff to get into the issue of the status of the disputes and address the legal briefs that have been submitted to the Committee so that we can then consider the proposal and vote on whether or not we should go forward and seek compliance.

Senator KERRY. Mr. Chairman, I think the Committee ought to get every bit of information we have a right to and we have all voted accordingly as we have gone along here, but I don't think it's fair to say that this comes up just exclusively at the last moment.

I am looking at correspondence that has been going back and forth between your Counsel or our Counsel and the Committee and the White House, November 2nd. There were subsequent letters on November 27th, December 4th, and December 13th.

So there's been a legitimate sort of disagreement here. These are complicated, legitimate legal issues. There are a lot of lawyers on the Committee. They understand that if a certain action is taken in one place or a point of view is expressed at one point, it has enormous impact on other things that may or may not occur that go well beyond the scope of this investigation conceivably. And everybody has rights here that deserve to be protected.

We began with the notion that what was important to the Committee was to see the document of a so-called Government lawyer. Now that document is being made available to the Committee, but as usual as we have gone through the escalation of demands here, after thousands and thousands of documents have been, and this is the first time in this entire inquiry we have reached this kind of confrontation.

It seems to me that now that we know the document that was the subject of that confrontation is capable of being put to the Committee, the Committee nevertheless wants to rush to say no, we are going to do it our way.

Now, I would at least think that in the aftermath of having received this letter—what's the date? It's today. It's today's letter. Before we rush to have a vote, I would certainly personally like to sit with the attorney, who I have never talked with at all, ever, in this letter, and find out whether or not there isn't some further capacity to resolve our issues without rushing to judgment here that we have to have a vote. I mean, I would like to talk to the person.

The CHAIRMAN. Let me suggest to the Senator that notwithstanding our going forward, that opportunity will continue and the door will continue to remain open and we will keep it open. Indeed, I would recommend obviously that we agree to 2 and 3, the Committee would agree to that and we have indicated that. We have suggested that we are not interested in seeking information from Mr. Kendall. We are not looking to do that. The Committee would

limit its testimony on inquiry about this meeting to the White House officials who attended it. We have agreed to the two areas of what we consider to be legitimate concern, but when you attach these other strings, we cannot and will not—I will not recommend that we agree to be limited in such a way. It is——

Senator BOXER. Mr. Chairman.

The CHAIRMAN. Yes, I am going to recognize Senator Boxer and then ask Counsel to make his report.

Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much. I'll be very brief.

Mr. Chairman, the Majority has the votes to do whatever you deem right. We know that. But I have to tell you, I think the American people are looking at this and they are deciding, is this politics or is this Committee for real. And I am just saying to you in my opinion, and obviously you're going to do what you think is right, that I think if the Committee moves forward today, in light of this good faith letter which you even said you agree with half of the conditions, you don't agree with the other half, I just have to say you are making a mistake. People are going to say, because people are smart, they wanted the notes, they made it look like the notes were the smoking gun, they are offered the notes but no, they are going to have a big all-out fight with the President.

People are going to think the Majority on this Committee are just turning this into a political brawl. And I would hope you would hear what the Ranking Member has said, and what Senator Kerry has said. I think you have come a long way, Mr. Chairman, in getting what you want. I think now to have a vote that is a partisan vote would be a mistake.

I will close with this, and again you may have a different view of this, but if you take what happened here yesterday, we had another smoking gun. We had an unknown phone number, we had an undisclosed phone call. Instead of taking a deposition and finding out what came out, I frankly think it was a time that you saw the compassion of the First Lady where she called and said please make sure that the Foster family gets the counseling they need. This was the smoking gun. The smoking gun is this number.

Now, you have this other thing. Mr. Chairman, I think you are running the risk at this point of destroying the credibility of this Committee, and I hope you will consider what the Senator from Massachusetts said.

You have a letter, it goes halfway where you want it to go. Why not take some time to try to negotiate the elements in this letter that you strongly disagree with and then let's go forward. It seems to me so senseless to have a partisan split when we have been so, I think, bipartisan. I respect that Senator Shelby doesn't like the word "bipartisan" in this letter, but frankly I find it refreshing. We ought to get back to that.

Thank you.

The CHAIRMAN. Senator Bennett.

OPENING COMMENTS OF SENATOR ROBERT F. BENNETT

Senator BENNETT. I apologize that I was not able to be at the recess meeting, so I am asking a question that has probably already been answered, but as a point of information, the most troubling condition I find here is number 4, and let me ask this question. It says the Committee would secure the concurrence to these terms of other investigative bodies, including the Independent Counsel, other Congressional committees, and so on. Does that mean that if that concurrence is not forthcoming, the notes are not provided?

The CHAIRMAN. That is correct.

Senator BENNETT. So the Committee, if we accept these conditions, in fact will not receive the notes but veto power over receiving the notes resides someplace other than this Committee but we would have committed ourselves in advance to abide by that veto power even though we have no control over it?

The CHAIRMAN. That is correct.

Senator SARBANES. No, that is not correct. I mean this is a condition for securing the notes. If the conditions cannot be met, the question of securing the notes will remain open.

The CHAIRMAN. We are not going to wait. We are just not going to wait for that——

Senator SARBANES. Well, but I want——

The CHAIRMAN. —to take 30 days to ascertain or 2 months or a month or whatever.

Senator SARBANES. How do you know that?

The CHAIRMAN. We are just not going to place an investigatory body in that position. It's unreasonable.

Senator SARBANES. Mr. Chairman——

The CHAIRMAN. The White House can suggest it, but I have to tell you for any group to go along with that kind of condition, it would not be responsible.

Senator KERRY. Mr. Chairman——

Senator SARBANES. Mr. Chairman, look, I recognize that this is a political exercise, and the Majority is intent on trying to provoke a confrontation with the White House.

The CHAIRMAN. I am sorry that you continue to characterize our undertaking our job in that fashion.

Senator SARBANES. No, no.

The CHAIRMAN. We've attempted to extend to the White House every opportunity to avoid this. Let me suggest this. We will continue to leave the door open if the Committee votes to go forward. And I wouldn't be a bit surprised after we do that, that we'll finally get compliance. It takes us bringing it right up to the edge before they comply.

Senator SARBANES. Let me address Senator Bennett's question.

Senator Bennett, I take it the premise of the question was that the Committee would lock itself into where it could do nothing thereafter if the conditions were not met.

Senator BENNETT. That's the way I read it.

Senator SARBANES. That's not my understanding. This is an offer to turn over the notes if these conditions can be met. If the conditions are not met, the issue remains open. It would not foreclose the issue.

Senator BENNETT. I see, but nonetheless——

The CHAIRMAN. Of course, we would have to come back and start again.

Senator BENNETT. Nonetheless, to go to Senator Kerry's point.

Senator MACK. Which means there are no notes turned over.

Senator BENNETT. To go to Senator Kerry's point. If the conditions are not met, the notes, in fact, are not turned over——

Senator KERRY. May I comment, Mr. Chairman?

The CHAIRMAN. Yes, Senator Kerry.

Senator KERRY. I would like to see if we can diffuse this a little bit. Look, we're all caught in a difficult place here. I mean it seems to me that we want the American people, and I think the Administration wants the American people, to understand that nothing is being hid. That's in everybody's interest here. That's obviously why they have come back and made an offer with respect to making the notes available.

Now, we may have some questions about the conditions. I have questions about two of the conditions. I don't know what the bipartisanship means. I would like to know that better. It's a legitimate question.

I also don't know the full extent of the ramifications of item number 4, but I do know that what we're being asked to do has never, ever been asked before of the U.S. Congress in our history. Only once in history have we forced a President, and that was in Watergate, and that was with respect to Grand Jury testimony not with respect to the Congress.

So before I am forced to vote in what is going to be patently interpreted as a political vote today, if we do this in a rush, because people will be left with no choice. It's going to be a partisan, straight party line vote. That's not in the interest of the Committee. It's not in the interest of the Congress. It's not in the interest of this investigation.

I don't think it is too much, having received a letter from the President of the United States' Counsel today from the White House, which is the first time I have seen it, which raises legitimate questions about the full measure of this offer. I would like to flesh it out a little before I'm required to vote. And I can't believe that on a Thursday it's too much to ask us to have 24 hours or 48 hours for this Senator or others to say look, we have an interest in seeing this. We have an interest in protecting legitimate privilege. We have an interest in trying to find a nonconstitutional confrontation and a balance here.

I just cannot believe we are absolutely forced to vote on this without an ability to do that, and I just say to my friends on this Committee, there are very legitimate legal issues which none of us can resolve here, and we ought to walk delicately before we force this to go to court to resolve them.

You have professors of law at the University of Colorado, New York University, American University, constitutional experts, all of whom have weighed in and suggested that there's a legitimate claim here. Now there may be some——

Senator SARBANES. Would the Senator yield on that point?

Senator KERRY. I will.

Senator SARBANES. Now as I understand, the White House has inquired of Jeffrey Hazard, a very distinguished professor at the

University of Pennsylvania and American Law Institute and have received a letter from him, let me just quote very quickly one part of it and I ask that the full text be included in the record, but it follows right in with what the Senator has said:

> You have asked my opinion whether the communications in a meeting between lawyers on the White House staff, engaged in providing legal representation, and lawyers privately engaged by the President are protected by the attorney-client privilege. In my opinion they are so protected.
>
> The facts, in essence, are that a conference was held among lawyers on the White House staff, and lawyers who had been engaged to represent the President personally. The conference concerned certain transactions that occurred before the President assumed office but which had significance after he took office. The governmental lawyers were representing the President ex officio. The other lawyers were retained by the President to provide private representation to him. On this basis, it is my opinion that the attorney-client privilege is not waived or lost.

He then goes on to lay out the legal reasoning.

This is, of course, I guess, one of the preeminently recognized national experts on issues of this sort and I think this letter ought to be included in the record as well.

The CHAIRMAN. It will be included in the record in its entirety. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Mr. Chairman, I have looked a little bit at the issue of privilege. Clearly you can find a lawyer who will argue for it and a lawyer who will argue against it. I think that we should undertake an appropriate proceeding which will give us a definitive answer.

As I see it, from my experience in the law, though I am not an expert in the areas of privilege, when you have private counsel representing the President and the First Lady, protecting them from actions taken when they were not the President and First Lady, when it perhaps involves activities of the First Lady as an attorney representing a private client who has since been involved in litigation by the Federal Government to recover money, and you have the lawyers for the Office of the Presidency meeting to turn over potentially—and we don't know—what has come into their hands in an official capacity, potentially turning that over to the private counsel who could use that in defense of the private individual who serves as the President of the United States, it is absolutely outrageous to say that that is covered by the attorney-client relationship.

In effect, it is a total abandonment and derogation of the duties of the lawyers for the Office of the Presidency if there were, in fact, any materials of a confidential governmental nature turned over to the private attorney.

We cannot know until we see the records. I would say condition number 1, that the Committee would agree that this meeting was a privileged meeting, is the height of nonsense. I don't think we need to go any further. We have already offered conditions number 2 and 3.

Condition number 4 is designed to continue the pattern that the White House has pursued in this entire investigation, which is to delay, diffuse, obfuscate, and make more difficult the ascertaining of the facts relating to this entire matter.

We have gone on for months and months and months because the information comes out only after months and months and months of investigation. This meeting was very carefully concealed from us until most recently. This procedure to get concurrence from the Independent Counsel who would certainly in my view not be willing to accept these conditions, that buys another 2 to 3 months' delay. With the delaying tactics, perhaps you could be delayed until this time next year, which has a significance that I need not point out to my colleagues on both sides of the aisle.

Political? Yes, if you want to say it's political, take a look at the politics of November 1996. I believe, however, the most important thing we can do is to pursue the legal question through authorization to seek enforcement of this subpoena and let the courts rule. I would think this is clearly not a privileged meeting. To offer to go forward only if we get the concurrence of the Independent Counsel as it is identified here is the equivalent of a snipe hunt. We will get to spend another month in the woods with the sack and a light waiting for the snipe to show up. You do that for a few more months and yahoo, here we are in December 1996.

I think that we have been delayed, diverted, and diffused long enough. I hope we would go ahead and seek a resolution of this issue and find out what actually happened at the meeting.

The CHAIRMAN. I'm going to ask——

Senator DODD. Mr. Chairman, could I just be briefly heard?

The CHAIRMAN. Senator Dodd, go ahead.

OPENING COMMENTS OF SENATOR CHRISTOPHER J. DODD

Senator DODD. I would just like to underscore. First, there are no documents involved here. We are talking about notes of a meeting. Let's first understand what we are talking about here. It is not a question of documents being withheld in any way.

Second, we are setting ourselves up, Mr. Chairman, here. If we go ahead and vote on this, based on at least what we are looking at as a lot of legal opinion, we could end up in the awkward situation of this Committee of having the courts, despite the offer to turn over the documents, ruling that it is all privileged and then the Committee doesn't get the benefit of having the notes.

So it seems to me at least from a Committee's interest standpoint of trying to get at the information with the offer on the table, that it is in our interest to try and see what can be done on some of these conditions that have been raised to see if there is any movement here.

Because if we go ahead and vote and there is no counteroffer that comes back, and the courts rule that in fact the notes are privileged, we have lost out entirely on the Committee. It seems to me when you look at the body of legal opinion here, the people don't have an axe to grind, not Democrats or Republicans, merely sharing with us their views on whether or not the invocation of privilege would apply, we ought to take note of that on this Committee and make an effort to find out if we can't complete our proper role here and get at the information, rather than jamming the subpoena, getting a judicial decision which in fact rules against us. Then the matter is over with except the point that we can make

political points that we wanted to get the material but the court said no.

So it seems to me it is in our interest as a Committee here to try and find a way to take advantage of the offer to get the notes and find out whether or not there's any of these conditions that can be negotiated, raising the issue that the Senator from Utah has and others to find out if there's some flexibility. We can move on with other witnesses and so forth. This issue will be resolved one way or the other in the next few days or weeks whatever it is and we will get to that point again, but we shouldn't lose that opportunity, it seems to me.

Senator BENNETT. Could I ask my friend from Connecticut a question?

Senator DODD. Certainly.

Senator BENNETT. Suppose following on the comment by the Senator from Massachusetts we said to the White House, OK, we accept your deal if you drop conditions 1, 4, and 5 and we give you 24 hours to answer. I'm not a lawyer. I'm not as troubled about number 1, and I don't really understand what number 5 means. I'm very troubled by number 4. I think number 4 is clearly drawn to make sure that the notes in fact will never be turned over, so I'm prepared to vote as my Chairman would ask me to vote on the issue of condition number 4.

Now if giving the White House 24 hours so that they say they will drop this condition and turn the notes over to us, as Senator Kerry implied they were willing to do, but apparently the conditions indicate that they are not, if in fact they are willing to turn the notes over to us, I'm willing to wait 24 hours, but are you prepared to——

Senator DODD. I don't know and I don't know if any of us know. That is the point of a negotiation, it seems to me. I don't understand. Number 1, it seems to me is sort of—it is basically saying what most of us agreed here anyway, we are testing that. So number 1, I think, is not really the issue. I think it's 4 and 5. I think I understand 4. I'm not sure I understand 5 entirely myself.

Senator BENNETT. I am not sure I understand 5 either, but number 4 pretty much makes up my mind.

Senator DODD. I understand that, but I don't know the answer because I have seen this just this morning as well, but let me ask, if I can, our Counsel to interpret what number 5 means because I haven't heard a clear—4, excuse me.

The CHAIRMAN. Wait, let me do this now. I think everybody has expressed—Senator Domenici has not nor has Senator Bryan and I am going to recognize both of them for their comments. I think Senator Dodd, you certainly have put forth the essence of what we're attempting to do and that has been to attempt to get an agreement which would protect legitimately those interests as it relates to the attorney-client privilege that are vested, we covered that in number 2 and in number 3 as well. That is an offer that has been out for in excess of 2 weeks. The other three are absolutely unacceptable.

Having said that, the White House is obviously not only through their representatives here but also others are following what we have said. They have gotten our reply, and they can, during the

course of our procedures which will take us through until tomorrow or any time up until we vote, they can accept that which we have put forth weeks ago, at least 2 weeks ago, and they have not seen fit to accept until today with various strings in addition.

So my intent is to recognize Senator Domenici.

Senator DODD. Can I just finish my one question? I want to hear what an explanation of number 4 is because I have the same—my eyebrows were raised as the Senator from Utah's were when I read it on its face. Can I ask our Counsel what he interprets that to mean?

The CHAIRMAN. You can ask your Counsel certainly, but I am going to ask Counsel to limit this. Then I am going to recognize Senator Domenici and Senator Bryan, and I am going to ask our Counsel and Senator Shelby to take a half hour as it relates to the legal positions and then a half hour to Senator Sarbanes as he would designate for Mr. Ben-Veniste and others. Then we will have whatever other debate might be necessary, and if we have not received from the White House at that point in time an acceptance of what we have put forth, we will go to a vote. We will still leave this matter open because we will then have to move forward on the vote tomorrow, and we would keep this time still open. The White House will still have the opportunity to accept what we have put forth, and that which is embodied in 2 and 3. So there will be ample opportunity. It is the intent of this Senator to keep the process moving.

Senator Domenici—excuse me, Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Mr. Chairman.

If I may respond to Senator Dodd, and indeed to Senator Bennett, my interpretation of point 4 in the letter is somewhat different than has been represented here today, and I think it comes from an understanding of the very harsh consequences that the law has provided in cases where a privilege has been waived. And indeed there have been entire treatises written on the attorney-client and work product privileges. Let me without belaboring the point quote the Central and Horn Book proposition: "Conduct inconsistent with a clear attempt to prevent disclosure constitutes waiver."

So there is a measured reasonableness in the proposal that has been set forth in number 4 here today where the Independent Counsel and other Committees who might be interested would also be the beneficiaries of an agreement here because they would get the notes as well, but all that I understand this proposal to be requesting is that the others agree that this does not constitute some general waiver of attorney-client privilege or work product privilege. And under those circumstances, it seems eminently reasonable to me for such a condition to be requested. I think that contrary to what has been stated here today, it would not take that long to, at least, find out the response to the question posed here.

So I hope that answers your question, Senator Bennett, and puts it in greater perspective, Senator Dodd.

Senator DODD. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Domenici.

OPENING COMMENTS OF SENATOR PETE V. DOMENICI

Senator DOMENICI. Mr. Chairman and fellow Senators, I won't be very long at all. I'm used to interminable debates for the last 2 or 3 weeks, and I look forward to those for the next 5 days, but hope perhaps we can get a little bit——

Senator DODD. Maybe you could take this one as well to your budget hearing.

Senator DOMENICI. Might as well get along a little quicker here so I won't have to do that there. While I give you my thoughts, I will at the same time be asking a question.

I want to commend the Committee, the staff, and the Counsel for both sides for getting us to where we are, because I believe we have gone through some very touchy, troubled investigative processes and I think it's been rather fair to this point. Obviously, anybody who watches these kinds of things historically, sooner or later you get to a crunch point. We are getting close to a point where there are a couple of very, very serious issues that may split us, and I wish they wouldn't. I wish it would not be partisan. But essentially as I see it, we're a long way from getting this evidence, even if we issue a subpoena. First of all, don't we have to, after we vote here, don't we have to vote in the Senate?

The CHAIRMAN. That's correct.

Senator DOMENICI. Is it debatable in the Senate?

The CHAIRMAN. It is.

Senator DOMENICI. And isn't in the normal give and play between Counsel, isn't that time available all the way through to get these kinds of issues resolved?

The CHAIRMAN. Absolutely. The door will still continue to remain open, Senator.

Senator KERRY. Sure, but Mr. Chairman, if I could just ask my friend, I mean he knows, he's been around Washington a long time.

Senator DOMENICI. Could I finish my thought? I haven't said a word, let me finish it. I'll be pleased to exchange with you.

Senator KERRY. I apologize.

Senator DOMENICI. I had thought paragraph number 4 was very, very unreasonable, and it still may be. I have heard your explanation, I haven't heard ours. But obviously you don't have to be a very big lawyer or have written the Horn Book on privilege to know that this is a very conditional offer—very, very conditional. I mean it permits some to say they want to give you the evidence, why don't you sit back and say thank you. But when you read it, they're not giving you the evidence because they're attaching conditions, some of which we can't even meet and some of which we would be terribly foolish to do.

Why would we say that that meeting was privileged when our whole contention is that what we're trying to get is not privileged? Now to me it seems like that's just turning everything on its head. We are not contending as they do that it's privileged. I assume if it is, we would assume they wouldn't give it to us, right? Unless it is exculpating and they want to be generous, why would they do it? So it seems to me somebody wrote this nicely to make it sound like they're giving you something but they really aren't.

Now, frankly, that is my way of saying there's a lot of politics in this letter. For those who said it is politics on our side, this is

a very good political letter, along with being written by some very, very good lawyers.

I believe we ought to proceed, we ought to get a brief description from our lawyers, and there is plenty of time, Mr. Chairman. There is plenty of time for you all to work this out. If the White House really wants to and they aren't attaching conditions that are unreasonable and would prejudice this Committee's ability to get its job done, they will get worked out. If not, I assume we will let a court decide. And even that's weeks and perhaps months away, isn't it?

The CHAIRMAN. That is correct.

Senator DOMENICI. So in the meantime, the White House is stuck with the proposition that they have to maintain that they don't want to give us this because it is privileged. With whatever the ramifications of that are, that we don't want to give you something because it is privileged. That is their privilege to maintain that for the next 6 months. But we ought to proceed so that that will end at some point. I mean it won't end if we don't start with the process that takes an awful long time from beginning to end.

I would be pleased to yield if the Senator has something.

Senator KERRY. What I was going to say to my friend, and I think he makes good points as he always does, but is there not a reality here that there's a clear distinction between a vote today and the headlines tomorrow which are obviously headlines of confrontation that posture all of us in a position of being viewed as forcing something that I'm not yet certain we have to force. Now that is the distinction here; to one degree it's the distinction.

Second, I would like to be able to examine for—you know, it seems to me not too much given the historical precedental value of what we're being asked to do, for some of us to be able to explore in our own minds, as well as with those involved, the legitimacy of the claim, questions that arise about the other two components, which I have acknowledged, I have questions about. Before I have to cast a vote, I would like to have the full measure of ability to be able to cast a vote that is fully thought out and possibly even for this whole Committee avoidable in terms of the confrontation.

If all we are doing is looking for the headline tomorrow, "Senate Committee votes to subpoena to force President," we can do that, but if we are not just looking for that, why can't we come back either tomorrow or Monday once we have had that opportunity to see whether or not this can be flushed out further? And then conceivably everybody's interests are satisfied.

Now maybe that can't happen. It may be that even some of us will be convinced that there isn't a legitimacy to some component of this, but I don't think it's asking too much for that in the context of the larger purpose of this Committee and the amount of work that we're doing.

The CHAIRMAN. Senator——

Senator DOMENICI. Well, I mean I can address the issue. I don't see that as being the big issue that you do. If the subpoena is not going to get carried out and the White House is not going to have to do anything for a long time——

Senator DODD. Pete, would you yield on that point?

Senator DOMENICI. It doesn't seem to me that the issue you raise about the headline tomorrow is that important.

Senator DODD. Just a point here. You know, this is——

Senator KERRY. Of course it is important, if I could just say. I mean, the American people don't need to be given an unfair image if it is not fair. And if, indeed, there's a way to work out getting this document, why do they have to be creating the perception somehow that they are hiding something, if there's a legitimate privilege? Now if there isn't one, then maybe we ought to all of us send that message, but it seems to me that we all understand how this thing is played.

Senator DODD. Pete, I just want to make the point to you here, too, on this.

Senator DOMENICI. Sure.

Senator DODD. You go through this whole process, and once you start down that road, it gets more difficult, I think. You know, just taking a look at this, you could argue in point 1 that you don't want to agree that it's privileged. Well, maybe we could find language that says there's a legitimate claim of privilege here. That doesn't resolve it, but certainly we all agree that that's the case. There's a way, it seems to me here, to try and reach some accommodation on this and get the job done and get to the information, which I think has value for us all.

I would like to suggest that maybe, Mr. Chairman, rather than going—we can all make our statements here back and forth, but maybe it would be more worthwhile to just take the time with Counsel present and so forth and the White House to see if you can't come to some accommodation on all of this, rather than sitting here in a public hearing and just making our statements, to see if we can't utilize the time to determine whether or not there is an opportunity here to resolve this. It seems to me that would be a valuable exercise and use of our time rather than making our statements here. I make that suggestion to you.

Senator DOMENICI. Mr. Chairman, might I just say, nobody would like to see less confrontation around this time of year and maybe all the time around this place than this Senator. But I don't think we should leave those statements unanswered from the standpoint of—if the White House was serious about getting us this evidence, they have had a long, long time to work on trying to make these arrangements. Now every time we get to that, do we have to get to a day of subpoena issue for them to come to their senses? That's their problem too, isn't it?

Senator DODD. Pete, in fairness to them, and again the letter, I would draw your attention to the letter of December 13th. We can go back and forth, but they make the case that they have been working on this now. There may be a disagreement with some personalities here, but there is a pretty substantial record going back to early November on some of these matters where a real effort has been made. This isn't, I think in fairness, last minute.

I think we all ought to recognize there has been thousands of documents turned over without getting involved in any of this stuff we are in the midst of today. It's been very forthcoming. I think if we are going to be critical at some points, we also have to be complimentary where there is a willingness. And they really have done that, more so than anything else we have ever seen in Con-

gress in dealing with White Houses over the years, so I think it's worthwhile to make that point.

The CHAIRMAN. Senator Bryan.

OPENING COMMENTS OF SENATOR RICHARD H. BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman.

Let me just say I deeply regret the decision that would require the Committee to vote today on the question of the issuance of the subpoena. With all due respect, Mr. Chairman, I think it is a mistake, I think it is unnecessary, and I think it is avoidable.

This Committee ought to work with the White House to avoid a confrontation if possible. Putting this issue in some context, the Committee has sought the notes taken by Mr. Kennedy on the 5th of November 1993, and I must say that I think the Committee has made some progress. Putting aside the issue of timing which I understand divides us, the offer made today is significant. The notes that the Committee has sought are now being offered.

Now, I understand that there are some concerns about some of the conditions. Condition 5, the ambiguity of what is meant by a "bipartisan basis," and particularly the question of number 4 in terms of what all that would require. But I know of no reason, certainly no compelling reason, that we could not allow our Counsel to engage in further conversation with the White House to see if number 5 could be clarified and that there could be further refinements on the condition attached here as number 4.

And finally let me just say, Mr. Chairman, there has been a good bit of discussion on the doctrine of waiver. That is not one that electrifies the folks back home. It is subtle, it is esoteric, but it is nevertheless a very legitimate issue.

Every lawyer on this Committee, and there are a number on both sides of the aisle, understands that there is no concept of selective waiver. The White House clearly has no concern with respect to the contents of the November 5, 1993, notes. They are offering those notes, so that's not the issue.

The issue, which I believe is legitimate, and although the authorities are divided, nevertheless, there is a substantial question of law as to whether or not if those documents are tendered, it constitutes a waiver that would preclude them from asserting the doctrine of attorney-client relationship or executive privilege in a different forum, in a different context with respect to some other documents, and that, Mr. Chairman, is a very legitimate, bona fide public policy issue and I don't think we should make light of it.

I would just conclude, Mr. Chairman, by making the point that I wish the Chairman would reconsider his position. We are going to be here tomorrow. We may very well be here Saturday, and we are certainly going to be here next week. And to permit our Counsel to pursue the two conditions that are the most troubling to Members of the Committee, I see no reason why that could not be done before we are required to take a vote on the subpoena.

Let me say that I make no comment with respect to how I might vote on that issue after further discussions might be held. I would want to reserve judgment until I heard the result of those discussions.

I thank the Chair.

The CHAIRMAN. I would have to say that my colleagues' and friends' observations I think are very bona fide in many respects, absolutely, and those of Senator Dodd, if this was the first time that we were really considering this, but when you look at the background of it, and I am not attempting—it is not a question of who is right and who is wrong and whose interpretation and what personality. These things happen and we understand that.

But we have really reached a point now where I have to say, and my Counsel says—and I think our Counsels work together as best you could possibly hope for and have been in a very professional manner conducting themselves, even if they have different points of view on issues, but I would have to say that this is not a vacuum, this has not come up just to be sprung. This is something we have indicated we are going to be moving toward and that we have attempted to avoid.

I hope and notwithstanding—and I understand your well-articulated point—and we share a difference because we believe, and I think Senator Domenici indicated, we hope that we can bring this so we can get the documents and continue in a manner that will not prejudice unfairly the President and his right to counsel and his right to privacy in these situations, and by the same token will not impede the Committee from conducting its job not only as it relates to these notes but future endeavors.

By the way, your statement as it relates to, we should not take the question of waiver frivolously and just think that it's—we have no problem with that. I concur with that, and that is why as it relates to number 2 and 3, I think we addressed that. Hopefully we addressed it. There is a question as to 1, 4, and 5. To say to the White House right now—if you come back, even after the issue and voting on the subpoena is dealt with, we can accept the note as provided in this letter with conditions 2 and 3, but 1, 4, and 5 we cannot accept. I think that is a response, I think they know it. We have spelled it out here. We will go forward on this and if before we vote we get a communique that says they will accept that, that's fine, then we will go forward.

But I think Senator Domenici just laid it out. At some point in time, we have to get to this, and I have to be candid with you. There is a question of when do we continue to press forward. If we don't, there is a likelihood that we will not have an opportunity to pursue this, and to get a resolve that they are either going to put this information forward voluntarily or we will seek that process in the courts before we leave for recess, and that is the sense of urgency that would compel us.

Otherwise, absent that situation, I want to assure my colleague that I would absolutely put this over for 24 hours. I put it over before. This hasn't been a rush to do this, and I would put it over again. But that's the problem. We're banging up into that time delay. We would have to come back tomorrow in any event to vote. There is a 3-day layover period, reports that have to be issued. So I want to assure my colleague it is not with an idea that we are going to do this in an arbitrary way or because we are being arbitrary at this point in time. We are just facing that time clock, ticking away.

Senator BRYAN. Mr. Chairman, if I might respond ever so briefly. I understand the concerns voiced by the Chairman, and let me just say perhaps my own view on this is colored by my experience in serving on a Committee that none of us desires but whose hallmark was bipartisan. I realize it takes a little extra time to achieve a bipartisan result.

Let me with due respect indicate to you that I think it would be in the interest of this Committee to continue to try to pursue a bipartisan objective. I think that at least with some of us on this Committee, we do want an opportunity before we are required to vote on this to see if the issues that—raise legitimate issues, particularly the questions of 4 and 5 which have been discussed. It just seems to me without trying to see if there's some resolution, some further massaging of language, some clarification, that to vote today—again I most respectfully suggest it just seems that we ought to try to do that.

Maybe the answer is that there is no resolution, we will have to vote, but it just seems to me that that ought to be pursued. This document is significant, putting aside the question of the timing, this is significant. The White House is offering the document that the Committee seeks, and the conditions are of some concern to some of the Members.

The CHAIRMAN. Let me in an attempt—and this may not satisfy my colleague's request fully. I'm going to invite the White House—they have heard our reply and the concern, and I think very real concern as to the conditionality that has been attached to their proffer.

The fact that 1, 4, and 5 make it impossible for us to accept does not preclude a response by them as it relates to what I think is the central issue and which they are entitled to protection, that is 2 and 3. They have no waiver—that no waiver will be constituted in any other form as a result of their making available the information requested. And that the Committee would limit its testimony with respect to this meeting to the White House officials who attended it.

So, we have no problem. I don't see us voting until at least 2 or 2:30 p.m. I am holding open to the White House that if they have any desire to meet an accommodation as it relates to these, that I would put off this vote.

I am going to ask now that Counsels put forth our position in order to meet those legal requirements statutorily, with the idea that if prior to 2 or 2:30 p.m., the White House informs us that they are willing to proceed, as I have just outlined, why then we will put it off and we will have no vote.

Senator SARBANES. Mr. Chairman, I just want to make the observation, I think that is not in any way a reasonable or forthcoming proposition in terms of trying to resolve this issue, and I think that ought to be——

The CHAIRMAN. You have to start from someplace.

Senator SARBANES. That ought to be clearly understood. My own view consistently has been that the original proposal they made was forthcoming. This proposal is much more forthcoming than that one. I think it deserves careful consideration. The legal scholars tell us that their claim for the privilege is valid and warranted.

We have some of the best experts in the field telling us that, and I think this proposition you have just advanced is without any substance.

The CHAIRMAN. I'm sorry the Senator feels that way.

Senator SARBANES. I understand that the Chairman wants to provoke a controversy and create a political issue, and I regret that very much.

The CHAIRMAN. I regret that you feel that way.

Senator SARBANES. I do feel it very strongly, Mr. Chairman. I have worked with you, we have moved this matter forward in a very bipartisan way, we have joined in some very extraordinary and extensive requests for documents and for testimony from witnesses. We have tried to move this matter forward and delve into what has taken place, and I think the turn that this has now taken is clearly a political exercise. That is my very strong perception of it. I am clearly placing that view upon the record, and I regret that the matter has come to this.

The CHAIRMAN. I regret that as well, and again the offer is open to the White House. We still stand ready, and indeed if the hour of 2 p.m. comes and goes and we have not voted and have not taken this up, and I don't think we will by that time, I am still willing and this Committee is still willing to enter into an agreement. But we cannot make it an agreement that is so conditional that it does not assure the production of that which the White House on one hand says it's willing to put forth and on the other hand attaches conditions that indeed may make it impossible for that to take place. That's where we are, so I keep that offer open.

Mr. Chertoff.

Mr. CHERTOFF. Thank you, Mr. Chairman.

Mr. Chairman, we carefully reviewed the briefs that were submitted by both Williams & Connolly, the attorneys for the President, and by the White House Counsel's Office, as well as doing a considerable amount of independent research, beginning frankly well before this matter precipitated into something more lively in the last week.

Senator SARBANES. Are we working under a time limit?

The CHAIRMAN. Half hour on each side.

Mr. CHERTOFF. I would like to briefly outline the position that the Majority staff believes is appropriate after careful reflection and study of the applicable law.

Let me begin by saying that the threshold as to issue, Mr. Chairman, is why is this important, why are the notes and the occurrences in this meeting something that the Committee needs to look at. And I think it stems from the fact that the meeting may very well bear crucial evidence with respect to a number of the areas of concern under the resolution.

To pick one as an example, it has been much examined by this Committee the manner in which confidential law enforcement information was handled by the White House. There is evidence in the record that confidential RTC information, perhaps confidential Department of Justice information, came into the hands of people at the White House Counsel's Office.

The very crux of the question as considered by the Committee and as considered by, for example, the Office of Government Ethics,

was whether the information was handled for an official purpose or whether it was used for a private purpose, and that follows from the well-recognized—even recognized by Mr. Cutler, former White House Special Counsel—distinction between what the President does officially and what the President does in his personal capacity.

This meeting, to our knowledge, represents the first occasion after the confidential information was transferred to the White House Counsel's Office, that members of that Office met with the President's private attorneys.

The questions we must ask, and there is no substitute for penetrating into what occurred at the meeting, is what confidential information was conveyed, what use was made of it in the meeting, what planning was done in the meeting as a result of that information, how does that meeting relate to future White House activities, things the White House did after the meeting, including the fact that Senator Sarbanes pointed out, that 5 days after the meeting in which we are told by White House representatives that the torch was being passed to the private attorneys, Mr. Kendall sent a chronology back to Mr. Eggleston, passing the torch back. Was there an agreement in the meeting that both the White House Counsel's Office and the private attorneys would continue to operate in tandem to help the President with his personal legal problems arising out of the activities of Whitewater and the Rose Law Firm back in Arkansas in the 1980's?

The nub of the question faced by this Committee is, was the confidential information used in some fashion to benefit the financial or the personal interests of the First Family as they confronted mounting investigations into the activities of the law firm and of White- water back in Arkansas in the 1980's. And I might observe in that regard, Mr. Chairman, that the RTC Inspectors General were frustrated when they tried to get to this very question when they conducted their own investigation last year.

Now the briefs raised two objections, two principal objections to our obtaining this information. There is the objection or the concern expressed that by giving us the notes of this meeting, the White House will be creating a waiver for all other meetings or discussions involving the President and his private attorney. Nothing could be further from the truth. As I told the Committee earlier, Mr. Chairman, the law is simply to the contrary.

To the extent that the Committee subpoenas and compels the production of these notes, the courts have held that will not be regarded as a waiver. As recently as 2 or 3 years ago, the Court of Appeals for the 11th Circuit stated that position precisely in a situation in which Congress had subpoenaed records of a Government agency, the Court saying that the fact that a subpoena was issued meant that it was not a general waiver, so that this expressed concern is simply not a valid concern.

The second expressed concern is that we are interfering with the free exchange of ideas between the President and his private attorneys. Again, that is not what is being sought here. The record is clear that the President and the First Lady were not present in the meeting. Mr. Kennedy testified before the Committee that he was not conveying or carrying any messages from them into the meeting, they were not on the telephone with the meeting, nor in fact

is this a meeting which involves exclusively the private lawyers. So that concern is really not present here.

The third concern is one that has been raised but then lowered, and that is the reference made by the White House's submission to executive privilege. Let me be clear, Mr. Chairman, that the law is this: The President must make a deliberate decision to exercise the executive privilege. It is not something that can be raised by implication or can be raised by indirection.

My understanding of the paper submitted here is that the President has not raised the executive privilege. Not having raised it, my suggestion to the Committee is it need not consider the executive privilege in these proceedings. And I might observe that that is one of the factors that takes this case out of the precedent of *United States* v. *Nixon* and the cases dealing with the constitutional relationship between the branches.

What is at stake here is the President's desire to shield communications that have to do with his private affairs, with his private activities and that of the First Lady occurring before the President took office in 1993.

Let me finally turn to what is the principal argument that has been raised by the White House in connection with this, and that is that there is applicable here what is sometimes called a joint defense strategy or a common interest privilege, and that's a privilege that is accepted by many courts in the law where you have lawyers for two parties who are involved in joint defense against a common adversary.

One of the cases cited by Mr. Kendall in his brief, the Hanes' case out of the Third Circuit, states precisely that. It is available where two parties are in joint defense against a common adversary. The two parties here are the President and the Clintons privately and the Office of the Presidency. Yet on the facts of this case, there is no way one can interpret these two parties as being involved in a joint defense against the common adversaries.

To the contrary, there is, in fact, an adversary relationship or potential adversary relationship between the United States and the interests of the Clintons personally, so that this case, without suggesting that there are not cases where there may be a joint privilege between White House Counsel and personal attorneys, in some circumstances, for example, the filing of personal disclosure forms. And without dealing with the general propositions, which I understand are what have been commented upon in the press by various experts, what is relevant is this case. In this case, the subject matter of the meeting is only, only the conduct of the President and the First Lady at a time before they assumed office having to do with activities in Arkansas, having to do with activities of the First Lady's law firm, having to do with the activities of the Governor—of then-Governor Clinton, and having to do with their personal investments, none of which implicate to any degree the Presidential Office.

There may be political ramifications, but that does not convert that into a matter of Presidential Office concern as to which legal advice is required to the Presidential Office.

Let me suggest again that in this case we have the emphatic fact that there is a potential adversity of interest between interests of

the White House, which after all the White House Counsel's Office is populated by attorneys who have an ultimate obligation to the United States, and personal lawyers to the President whose obligations to the President, as their obligations would be to any other private client, is to contend against any attempt by the United States to impose liability against the President, whether it might have been liability against the First Lady through the activities of the Rose Law Firm in working on Madison Guaranty matters—and I might point out, Mr. Chairman, that interestingly, Mr. Nussbaum, when he raised an objection to Mr. Altman recusing himself in early 1994 from the RTC investigation, honed in on precisely this danger when he suggested he was concerned about the RTC in light of its past history of aggressively pursuing lawyers who are counseling savings and loans.

The President was and is perfectly entitled to private representation on these issues, in resisting claims of liability, but that is not the same interest the United States and its lawyers have in seeing to it that the obligations owed to the United States are carried out.

Let me finally turn to yet another reason why this common interest does not apply, and that has to do with the presence of Mr. Lindsey on the scene, because wholly apart from the fact that the White House lawyers were not in a position on these facts to share a common or joint defense with the private attorneys, Mr. Lindsey was not present in the capacity of a lawyer. What is quite clear is that the attorney-client privilege is a narrow privilege that has to do with communications from the client to the lawyer and the lawyer to the client in connection with the giving of legal advice.

Not every effort by a lawyer to collect facts is subject to the attorney-client privilege. To the contrary, attorney privilege is routinely struck down where people are conversing with attorneys as witnesses or because they have factual information that are going to help the attorney prepare his case. That is not subject to the attorney-client privilege.

Mr. Lindsey quite forthrightly stated in repeated questioning at hearings last year and in depositions last year, that his functioning with respect to the White House handling of Whitewater was not in the capacity of a lawyer, he was not giving advice, and that, it seems to me, undercuts the position taken by the White House now that Mr. Lindsey somehow had been functioning giving legal advice even though he was not part of the White House Counsel's Office.

Finally, let me observe with respect to the privilege, and then I'll move briefly to a couple of other small points, that the notion that the White House coming into this meeting, the White House Counsel's Office, was busily engaged in doing Presidentially-oriented legal work on Whitewater is simply contrary to the facts.

Until November 5th, after Mr. Foster's papers had been transferred to Williams & Connolly, the only evidence we have of involvement by the White House Counsel's Office in matters relating to Whitewater doesn't have to do with giving legal advice; it has to do with collecting confidential law enforcement information. That is not a protected activity that deserves the privilege. To the contrary, it is the very subject of the investigation. And the excuse that was given at the time it was collected was not that it was being collected to give advice to the President, which would have

suggested a problem, but to the contrary that it was being collected to help in formulating press responses, not covered by the privilege.

Let me observe briefly this, Mr. Chairman. There is a well-accepted exception to the applicability of the privilege, where in fact the meeting itself is the subject of controversy. Sometimes it is called the crime fraud exception; sometimes it arises where advice of counsel is present in the case and issues in the case.

Clearly from the standpoint of Congressional oversight, the conduct of the White House Counsel's Office with the information is the very nub of the inquiry. There is a substantial waiver problem, given the fact that the White House has chosen to characterize this meeting in the press to some degree or another.

Finally, to the extent that there is a broader protection claimed for attorney work product in this meeting, let me say that is not an absolute privilege. It is a privilege that is subject of being pierced on sufficient cause, and I would suggest to the Committee that the Committee's oversight responsibility constitutes just such cause.

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Mr. Chairman, last week in the Committee I raised the point that the President's invocation of attorney-client and executive privilege resembled the claims of another White House some 20 years ago. In light of this development and the constitutional dimensions of such a decision, I want to take a look here today at what kind of arguments have been raised about the attorney-client privilege and executive privilege in a little more detail.

I have taken some of the statements that have been made on the subject and I have put them in order so I can place them here on the screen and everyone can review them with me. There are three main arguments that I want to look at that have been raised about this issue. If we could just start by looking at the first argument and what has been said in support of it.

For example, the argument, importance of confidential relationship to carry out official duties of the Office of the President. Let me quote this:

"What we have to bear in mind is that for a President to conduct the affairs of this office and conduct them effectively, he must be able to do so with the principle of confidentiality intact.

And then compare it with this statement:

The Constitution gives the President the right to protect the confidentiality of material the disclosure of which would significantly impair the performance of the President's lawful duties, particularly against incursions by the Legislative Branch. Thus, courts will not order the President to release documents "that cannot be made public consistent with the confidentiality essential to the functioning of the Office of the President."

You will notice I read two fairly similar statements, Mr. Chairman. Now, I want to show you who made those statements. The first statement I read was made by the Nixon Administration in 1973. The second was made in the brief submitted to this Committee by the Clinton White House on Tuesday night.

Now, I would like to look at the next page, if they will put it up. Argument—and we'll compare this together—the White House Counsel's staff covered by attorney-client and executive privileges:

Mr. Dean is Counsel to the White House. He is also one who was counsel to a number of people on the White House staff. He has, in effect, what I would call a double privilege, the lawyer-client privilege relationship, as well as the Presidential privilege.

That was President Nixon's response to a question from a UPI reporter on March 15, 1973. Compare it with the following:

The presence of White House lawyers at the meeting does not destroy the attorney-client privilege. On the contrary, because of the presence of White House lawyers, who themselves enjoy a privileged relationship with the President and who are his agents, was in furtherance of Mr. Kendall's and White House Counsel's provision of effective legal advice to their mutual client. Their presence reinforced, rather than contradicted, the meeting's privileged nature.

This was in the Clinton brief on December 15, 1995.

Following:

Like lawyers representing private clients, Government lawyers also have an attorney-client relationship with the agencies or officials they represent that protects communications in furtherance of that representation from disclosure. Lawyers serving the Office of the President must hold their clients communications confidential, whether they are received directly or through agents of his choosing, such as his private attorneys.

This is the Clinton brief, December 12, 1995.

Compare the following. The argument was, and I suppose still is:

We're willing to cooperate but Congressional request is overreaching, it destroys Presidential confidential privileges.

Now this is a statement of President Nixon in a question-and-answer session at the annual convention of the National Association of Broadcasters, March 19, 1974, when he said:

The reason that we do not say come in and bring your U-Haul trailer and haul it all out very simply is this: It is not because of a lack of desire to cooperate. It is, first, because we believe that the Committee has enough information to conduct its investigation and to see whether any charges it may have against the President are true or false.

Compare this to a statement in the Clinton brief, December 12, 1995.

The present conflict is wholly unnecessary because the Special Committee has available to it the means to obtain the information it legitimately seeks without invading the attorney-client privilege.

Another one—and this is from President Nixon in a letter responding to House Judiciary subpoenas requiring production of Presidential tape recordings and documents, June 10, 1974, and this was what the response was:

From the start of these proceedings, I have tried to cooperate as far as I reasonably could in order to avert a constitutional confrontation, but I am determined to do nothing which, by the precedents it set, would render the Executive Branch henceforth and forever more subservient to the Legislative Branch, and would thereby destroy the constitutional balance. This is the key issue in my insistence that the Executive must remain the final arbiter of demands on its confidentiality, just as the Legislative and Judicial Branches must remain the final arbiters of demands on their confidentiality.

Of course that was, as I said, a statement by President Nixon in a letter. Compare that to this one by the Clintons' brief on December 12, 1995, to this Committee.

In a spirit of openness and with considerable expenditure of resources, the White House has produced thousands of pages of documents and made scores of White House officials available for testimony, foregoing assertion of applicable privileges. In view of this cooperation, the Committee's attempt after 18 months to invade the relationship between the President and his private counsel smacks of an effort to force a claim of privilege by the President, who must assert that right by avoiding the risk of loss in all fora of his confidential relationship with his lawyer.

That was President Clinton.

The similarities here may make some Members of the Committee uncomfortable, I hope not, but I believe the exercise makes an important point. The claims of attorney-client privilege and executive privilege raised by the White House are in many ways virtually identical to those of the Nixon White House. Just compare them as I did.

At the time of the Nixon statements, the White House claimed it had cooperated with the investigatory committee and that additional document production and compliance with subpoenas was tantamount to cooperating with a fishing expedition. The Nixon White House adamantly denied that not complying with the subpoenas was not an act of stonewalling or a cover-up, but an act of protecting the legitimate confidentiality and prerogative of the Executive Branch.

Now, Mr. Chairman, we all know that this claim was bogus and that the White House was hiding something then, as perhaps they are now. I would hope that some of the same people that served on the Watergate Committee would remember that invoking such privilege was only used 20 years ago for one reason, to shield the White House from damaging disclosures.

I don't know if the White House has a lot to hide, but I do know that the similarities between the current impasse and the events of 20 years ago have got to lead us to a great deal of suspicion.

It's hard to believe that the White House, if nothing is damaging in Mr. Kennedy's notes, would risk, Mr. Chairman, a constitutional showdown and reconstruct arguments used in a cover-up 20 years ago, simply, to protect a tenuous claim of attorney-client privilege and perhaps executive privilege.

The CHAIRMAN. Thank you, Senator.

Mr. Chertoff.

Mr. CHERTOFF. Mr. Chairman, I thought since there is a little time left, because it was so important to address this issue, that the underlying concern here was not the November 5th notes but that the concern was a more generalized waiver, just to establish that again there is simply nothing advanced in the law in Mr. Kendall's papers or in the White House's papers that support the fear that an involuntary disclosure constitutes a waiver.

There is law, however, to the contrary, that when something is subpoenaed, it does not create a general waiver. And I thought I would just make the Committee aware of just two of the recent cases on this point.

One is a case from the Court of Appeals for the 11th Circuit entitled *Florida House of Representatives* v. *U.S. Department of Commerce* decided in 1992, a case in which there was a claim of a waiver of privileged status because there had been a previous disclosure to Congress. The Court of Appeals said the disclosure to Congress similarly does not sustain the finding of waiver. The record against reveals this disclosure was involuntary.

In a December 10, 1991, letter from Under Secretary Michael R. Darby to the House Subcommittee on Census and Population makes it clear that the Department was dead set against releasing this information to Congress. It was only under the threat of Congresses' power of subpoena that they reluctantly released half the

data. The Subcommittee Chairman's reply letter only confirms the forced nature of the disclosure. The disclosure to Congress was not voluntary and therefore does not support a finding of waiver.

I might point out from the U.S. Court of Appeals from the Third Circuit, similarly, in the Westinghouse case, where they found a voluntary disclosure to the Department of Justice to constitute a waiver, and then they concluded in footnote 15, "had Westinghouse continued to objected to the subpoena and produced the documents only after being ordered to do so, we would not consider its disclosure of those documents to be voluntary."

Contrary then to the submission of the White House, at least two courts of appeals have recently held that it is the very fact that we are subpoenaing the documents and that we are requiring their compulsory disclosure that gives the White House precisely the protection it has claimed that it wants to achieve.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shelby, anything else?

Senator SHELBY. Nothing else.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. What is the time, Mr. Chairman?

The CHAIRMAN. We'll yield to you and you can use up a half hour or whatever time the Senator and Counsel see necessary.

Senator SARBANES. Mr. Chairman, if you ever wanted a dramatic representation that this was a political exercise, it was the statement Senator Shelby just made, and his posting these quotes up on the machine. I mean obviously it is a political game that's now gone on, and in some respects I welcome what he did because I think it just demonstrates it beyond any shadow of a doubt. You reacted a little earlier when I made that point with some concern, but I think this performance clearly shows that.

First, every White House—Reagan White House, Bush White House, Johnson White House, you name it, go all the way back through our history, have asserted these privileges.

Actually, the attorney-client privilege is a little different because this is the first time as far as I have been able to find out that the Congress has tried to invade the attorney-client privilege.

Watergate was an executive privilege issue, and that's the one that's generally run through our history. You could find from any Administration that has had to contend with this issue with the Congress quotes comparable to the ones that Senator Shelby has thrown up on the screen, so this effort is really a very clear political exercise, and I think it needs to be recognized as such beyond any shadow of a doubt.

Second, the assertion about the parallel doesn't reflect a lot of knowledge about Watergate. The claims there of executive privilege were only overridden through a Grand Jury subpoena, not through Congressional subpoenas, and then only after dramatic demonstrations of compelling evidence of illegal conduct. We have had none of that here. In fact, I think one of the reasons we're off on this process question now is because nothing of consequence has been uncovered on the substantive issues. We get the assertion of the smoking gun. By the time we finish the day's testimony, it is clear there is no smoking gun.

We get the assertion of the phantom telephone call. By the day the testimony is completed, there is no phantom phone call.

So again and again, that has been what's been uncovered. I know the Committee has not completed its work, but I have no reason at this point to anticipate a different result. We have had weeks and weeks of hearings, tens and tens of thousands of documents, depositions, transcripts. There has been no showing of any illegal activity, despite every effort to conjure up conspiracy theories, which goes on ad infinitum.

Now it is an important point because the Committee is required to go through a balancing process before it undertakes to intrude into the privileges that are associated with the Chief Executive.

You know, obviously, this is a very legitimate claim. Some of the leading experts in the legal field have indicated as much. As I quoted earlier from Jeffrey Hazard's letter that he thought the attorney-client privilege was applicable here, it was not waived, the danger of course is if you waive it in a limited instance, it will be considered waived in a broader instance.

One of the legal commentators said, and I quote him:

The claim was not only appropriate but important for Clinton to make to protect prerogatives as President.

There is obviously a question involved with the Office of the Presidency and the precedence that will be set.

I think the White House has been very forthcoming. I thought the Williams & Connolly proposal would have answered the questions Mr. Chertoff raised, and in particular, his question did they come out of a meeting and then set out on some joint effort to gather material and feed it back to the private lawyer. They explicitly said in the submission that that would be a matter about which the Committee could question. Let me just quote that:

We explained that Counsel to the Special Committee is free to——

First of all, they said you could question people before they went in as to what information they had going into the meeting.

Special Committee is free to assume, although we make no such representation, that everything known by the lawyers who attended the meeting were communicated. We explained that Counsel for the Special Committee is free to pose general questions about the purpose of the meeting. An appropriate purpose is a prerequisite for the assertion of a legal privilege and there would be no objection to questions that go to that purpose, as long as they do not require disclosure of communications at the meeting.

And they went on to say that they could ask people whether they took actions after the meeting, what steps were taken as a result of meetings.

So that information could be disclosed without disclosing communications at the meeting. I thought that was a forthcoming proposal. It was dismissed by the Majority, as they are dismissing all proposals, actually. I think the proposal today is obviously more forthcoming. What the White House has said is look, we'll give you the notes, but we want to get some assurances that we are not broadly waiving the privilege.

I think that's a very reasonable position, and I think the proposal made today is a very forthcoming proposal, and I think it's being rejected because it would in effect, at least temporarily, bring this political exercise to a halt, but it's clear that we're now into a polit-

ical game. I think Senator Shelby's statement particularly made that clear in trying to draw an analogy which is completely far-fetched.

As I said earlier, Mr. Chairman, I regret that we have come to this point in our proceedings. I yield to Mr. Ben-Veniste.

Mr. BEN-VENISTE. Thank you, Senator Sarbanes.

Mr. Chairman, yesterday as we broke, you gave the Committee Counsel the assignment to do two things: One, to evaluate the memoranda that had been submitted by the White House and by Williams & Connolly; and second, to pursue further whether there was any way to avoid a confrontation by finding compromise.

We have done that. Indeed, we prepared a memorandum which was submitted to you today which outlined our thoughts on why the Committee should not vote at this point to seek enforcement of the Kennedy subpoena.

Following the submission of that memorandum, we had still another proposal from the White House, which is contained in Ms. Sherburne's letter of this date, which takes the proposal already on the table to much greater lengths.

I'm not going to reiterate the points that have been made by others far more learned in the field of attorney-client privilege than I, but I would point out the fact that after these experts, law professors who have been recognized as authorities in the field during the entire course of my professional life, have had the opportunity to review the memoranda that were submitted in at least one or two cases, they recognized that they changed their view from an initial opinion that they got from reading superficial accounts of the controversy as reported in the newspapers.

So looking at the underlying issues, I think it is enough to say that the professors who are most learned in this area, having reviewed the issue now with the benefit of the briefs that have been filed, are at least of the view in some instances, and perhaps in the majority, that a valid claim has been set forth worthy of protection.

Let me discuss my view about what we have emphasized with Majority Counsel in terms of the appropriateness of going forward at this point. I've taken the view that while there is some satisfaction to be gained on the short-term basis by provoking a constitutional confrontation, looking at this in the longer view warrants us to be more deliberate in our approach, and that is why we must recommend that there be no vote to enforce the subpoena issue.

The teaching of the law on this point is quite instructive. It is well established that a Congressional committee shouldn't attempt to override a claim of privilege absent compelling circum- stances, and then only after a careful balancing of the interests involved. In *United States* v. *House of Representatives,* a District of Columbia Federal case, the court refused to determine whether a Reagan Administration EPA administrator, Ann Gorsuich, properly withheld documents subpoenaed by the House of Representatives. Instead, what the court did was say that the Branches ought to attempt to settle their differences without further judicial involvement.

To our knowledge, only in one case have the courts required the disclosure of confidential Presidential communications, Mr. Chairman, and then the disclosure was to a Grand Jury and not to the Congress as Senator Sarbanes has pointed out.

In *United States* v. *Nixon,* the D.C. Circuit held that all such Presidential communications are presumptively privileged. In other words, a Congressional committee seeking to inquire into Presidential communications bears a heavy burden to demonstrate that it has a proper basis to do so, and that burden can be met—and I quote from the court's opinion:

> Only by a strong showing of need by another institution of Government, a showing that the responsibilities of that institution cannot responsibly be fulfilled without access to records of the President's deliberations.

Moreover, the Committee must prove:

> That the subpoenaed evidence is it demonstrably critical to the responsible fulfillment of the Committee's functions.

Now here I don't believe any such showing can be made. The analogy has been made to Watergate, and I have some considerable familiarity with that investigation, Mr. Chairman. In Watergate, there was never an attempt to invade the attorney-client privilege. In Watergate, executive privilege was overridden, but that was only by a Grand Jury subpoena. The Congressional efforts to obtain the documents requested were rebuffed by the courts, and the Grand Jury request was in the context of a clear and convincing showing of rampant criminal conduct by the Nixon Administration involving a widespread conspiracy to obstruct justice, the misuse of institutions of Government such as the CIA and the FBI, widespread illegal wiretapping and all the things that the Nixon White House itself referred to as the White House horrors.

By contrast, as Senator Sarbanes has pointed out, after weeks and weeks and weeks of hearings, there has been no demonstration of impropriety, much less illegality that would justify intruding upon the President's privileges, both institutional and personal, in the way that this subpoena seeks to do.

The proposal that is on the table right now, which goes beyond the proposal put forth in the Williams & Connolly memorandum to this Committee, virtually takes us all the way through and gives us everything we have requested. If we go back and look at the proposal by Williams & Connolly, that proposal allows us to get the substance of all the information in the hands of the governmental witnesses, both before and after the November 5th meeting. It thus satisfies the test of providing us with virtually all we need.

The only thing left is the actual communication between the private attorneys and the public attorneys present at that meeting. Now, we have the offer before us to actually provide the notes, conditioned only on a means of protecting privilege against claims of waiver.

Mr. Chertoff has cited to certain cases. I think it is appropriate that the Committee consider the cases that have been cited, the case law and as well the ability of the parties to negotiate further in the context of this substantial step that has been taken to provide the actual notes of the meeting.

Under those circumstances, and having in mind the teaching of *Nixon* v. *Sirica* and the other cases that we have alluded to in our brief—and incidentally we have received no memorandum or brief from the Majority on this matter—it is our view that it would be precipitous at this point to go forward to try to enforce the sub-

poena without a good faith exploration of the proposals set forth in today's letter.

I don't think that it would take long at least to make the inquiries with respect to item 4 in that letter, but right now there is no proposal to do so, and that is precisely what the courts have suggested that Congress do in fulfilling its function to try to avoid constitutional confrontation.

So in short, Mr. Chairman, it is our view that all of the precedents available to us demonstrate that the Congress has a special obligation to make all reasonable efforts to avoid an unnecessary confrontation with the Executive Branch and that we should work together to try to avoid such a confrontation at this time.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Ben-Veniste and Senator Sarbanes.

At the outset, let me say that people have feelings, strong feelings, and I do not quarrel with the way and the manner in which my colleague and the Ranking Member, Senator Sarbanes, interprets things that have taken place. I say that I believe that this Committee in a spirit of cooperation, and recognizing what it has to do and recognizing that there are divergences of opinion, legitimate on many issues, has done all that it can on both sides in working to achieve as much cooperation as possible. I have to state that.

It is not the Committee and it is not the Democrats, the Minority, who have asserted various privileges and put forth conditions, whether rightfully or wrongfully, whether reasonable people may agree or disagree, and so I do not say that in any way does this demonstrate a lack of good faith or cooperation on the part of my colleagues on the Minority side.

I would hope that notwithstanding, we may have a difference in the manner in which we proceed, that we can attempt to continue the efforts to work through this difficult process basically as we have, in the spirit of cooperation, and where we can avoid useless or needless problems, the issuance of many of the subpoenas heretofore, we can do them in the cooperative effort, I'm going to seek to continue that.

There may come times when we disagree, but I think that those are legitimate disagreements, and I certainly respect my friend and colleague's positions, you know, in terms of how he feels. Everyone has a right to his or her own feelings, I understand that, but notwithstanding that, this Senator is going to make every effort and as the Chairman, and as I believe my colleague has, to work cooperatively together and to undertake the duties that have been tasked to us.

I have a statement as it relates to the subpoena, and it is a formal one so I would ask that you bear with me. We are going to attempt to see if we can't re-establish a quorum so that we can vote one way or the other on this issue prior to a 2 p.m. vote that was scheduled, so bear with me as I go through this.

On December 8, 1995, the Special Committee issued a subpoena to the former Associate Counsel to the President William Kennedy for his notes of a critical November 5, 1993, Whitewater defense meeting held at Williams & Connolly. On December 12, 1995, Mr.

Kennedy advised the Committee that at the direction of President Clinton, he would not comply with the Committee's subpoena for his notes. After considering the legal arguments raised in the memorandum submitted by President and Ms. Clinton's personal lawyers and the White House Counsel, I have decided to overrule the objections based on attorney-client privilege and the work product doctrine and ask that the Committee order and direct Mr. Kennedy to produce the documents subpoenaed by 9 a.m. tomorrow morning.

The basis for my recommendation and for the proposed order is as follows. The Kennedy notes may contain critical evidence with regard to at least six areas of inquiry that the Special Committee is now investigating pursuant to Senate Resolution 120: One, whether the White House improperly handled confidential RTC information about Madison Guaranty and Whitewater; Two, whether the Department of Justice improperly handled the RTC criminal referrals relating to Madison Guaranty and Whitewater; Three, the operations of Madison Guaranty; Four, the activities, investments, and tax liabilities of Whitewater—its officers, directors, and shareholders; Five, the handling by the RTC and other Federal regulators of civil or administrative actions against any parties regarding Madison; and Six, the source of the funding and lending practices of Capital Management Services and the supervision by the Small Business Administration, including any alleged diversion of funds to Whitewater.

The events of the November 5th meeting may shed light on any number of these areas. For example, it clearly would have been improper for White House lawyers to pass along confidential RTC or other law enforcement information to the Clintons' private lawyers to assist them in defending the Clintons against RTC or other enforcement actions. After confidential information was obtained by the White House, this November 5th meeting appears to be the first instance when White House lawyers met with the Clintons' private counsel.

As many Members will remember, White House officials claimed during our hearings in the summer of 1994 that they obtained this confidential law enforcement information solely to assist in the official functioning of responding to press inquiries. We, therefore, must examine whether there were discussions of confidential RTC information during the November 5th meeting.

This Committee must determine whether the confidential RTC information was used to assist or guide the Clintons in their private defense of any RTC or other investigations. Obviously, these investigations of Madison raise the possibility that the President or Ms. Clinton personally could be held financially or otherwise liable in connection with the activities of the Rose Law Firm or Whitewater Development Corporation.

I emphasize that the actual content of this meeting between White House lawyers and private lawyers is critical in evaluating how the White House used this law enforcement information. I have carefully considered the White House proposals that the Committee proceed by asking questions only about matters occurring before or after the meeting with very limited questioning about whether steps were taken as a result of the meeting, so that wit-

nesses or counsel could determine whether the question might be answered without disclosing communications at the meeting. This proposal is simply not adequate.

The Committee must investigate what happened at this important Whitewater defense meeting, what was discussed, what information was shared, and what was planned. After reviewing the arguments raised by the President and the White House and after consideration of legal advice in a debate before the Committee which was extensive, I conclude that the arguments that this meeting is shielded by the attorney-client privilege is not persuasive.

I have indicated before that this Committee would entertain and keep open the door as it relates to the acceptance of a proposal put forth which we believe would protect the legitimate rights of the President and his Counsel.

First, neither the President nor the First Lady was present at the meeting nor did either communicate with anyone in attendance as the meeting was taking place, as testified to by Mr. Kennedy.

Second, the attorneys present were not all private counsel to the Clintons. The meeting was attended by four Government officials, three of whom were members of the White House Counsel's Office. As public employees, these White House Counsels could not properly handle the President's private financial and legal matters, particularly those that predate his inauguration.

Indeed, Lloyd Cutler expressed precisely that opinion when he was appointed White House Counsel on March 8, 1994:

> When it comes to a President's private affairs, particularly private affairs that occurred before he took office, those should be handled by his own personal private counsel, and in my view, not by the White House Counsel.

Simply put, the presence of these White House lawyers eliminates any basis for the Clintons to claim that their personal attorney-client privilege blocks disclosure to Congress of what happened at the meeting.

Third, I reject the notion that this meeting can remain privileged because the Clintons' personal interest and public interest represented by the White House Counsel were identical or common. To the contrary, the Clintons' private financial and other interest was to avoid any liability to the public arising out of the failure of Madison, the Rose Law Firm's representation of Madison in certain questionable transactions, and the Clintons' investment in Whitewater or any tax deficiencies. The conflict of interest is clear and convincing.

Fourth, the presence of Bruce Lindsey at the meeting is a separate ground to reject the claim of privilege since he was not serving as a private or public lawyer but as a White House policy adviser and spokesman. The mere fact that Mr. Lindsey is the lawyer by profession does not satisfy the requirements of the privilege. General statements that he has sometimes performed legal analysis or at one time rendered unspecified advice to the Clintons is not enough to transform him into counsel for purposes of this meeting.

Fifth, the privilege does not apply in any event because the communications in question are the very subject of the Congressional oversight investigation for possible impropriety or misuse of official information.

Sixth, the President has waived any privilege by allowing White House officials to characterize the nature of this meeting in official statements to the press, including allowing a White House spokesman to make the representation that no significant confidential information was communicated to the President's personal lawyers.

Based on this analysis, I have concluded that the objection to the subpoenas based upon the attorney-client privilege should be overruled. For similar reasons, I do not accept the same objection based upon the so-called work product doctrine. I believe that there is an extraordinary need here for this information because of our constitutional oversight obligations.

I recommend that this Committee order and direct that Mr. Kennedy comply with our subpoena of December 8th by no later than 9 a.m. tomorrow. I will ask the Committee to vote on ordering and directing compliance with the subpoena.

Now, we are attempting to see if we can't establish within the next several minutes a quorum for the purposes of taking this vote. If we can, then I would at the recommendation of Senator Sarbanes or the concurrence of Senator Sarbanes proceed with that vote. If we cannot, then I would recommend that we return at 2:30 p.m. for the purposes of that vote.

Senator BENNETT. Mr. Chairman, if we have a lull in the action here, as simply a historic footnote, as you might imagine, this subject came up at lunch, and indeed was discussed at some length, and some may not be aware that our colleague Fred Thompson was the Minority Counsel of the Watergate Committee working for Senator Baker when he was the Ranking Member of that Committee. He commented to us at lunch that President Nixon never asserted attorney-client privilege in his relationships with John Dean or, indeed, throughout the Watergate circumstance, and also that President Reagan never asserted an attorney-client privilege throughout the Iran Contra. I offer that, as I say, simply at this historical moment while we have this break in the action on the field.

Senator SARBANES. That is a very helpful observation, because it makes even more outrageous Senator Shelby's presentation on the television screen where he tried to draw up an analogy between Watergate and this instance, because as you have just observed, the attorney-client privilege was not at issue in Watergate and it is in issue here, but I appreciate the Senator's observation. I think it's extremely helpful to matters that have developed here at the Committee this morning.

The CHAIRMAN. It looks like it's a close question whether or not we can establish a quorum before the vote. We are getting close.

Senator Grams. Don't feel compelled to say anything.

OPENING COMMENTS OF SENATOR ROD GRAMS

Senator GRAMS. I was just going to say——

The CHAIRMAN. I noticed——

Senator GRAMS. I was just going to say I don't know what we could say that hasn't been said. I think we could vote and as Senator Domenici said, we take the vote and if the decision is made to challenge the subpoena, that we should do that. In the meantime there is plenty of time for negotiation. Other than that——

Senator SARBANES. The question isn't whether everything has been said that should be said but whether everyone who needs to say it has said it.

Senator GRAMS. Then I better be quiet.

Senator SARBANES. As we know from our experiences here.

Senator GRAMS. Thank you.

The CHAIRMAN. Now the question is, will the Senators arrive before the bell goes off?

Senator BOND. This is what bated breath is used to describe.

[Pause.]

The CHAIRMAN. It is Senator Sarbanes' request, and I think we are getting sufficient Members in, to have a quorum even as it applies to the technical provisions relating to voting. In this way we will avoid the necessity of voting to bring our colleagues back. So he's suggesting that we hold and see—there's several Members that were out. Senator Domenici is just arriving. I think if we have two more Members, we'll be able to proceed, so I ask my colleagues to be patient.

I'm going to suggest that we wait another 3 minutes. If we have not assembled a quorum at that point because there's a question, some of our colleagues on the Democratic side may have already proceeded down to vote, then I would suggest that we go down, make the vote, and return immediately.

As a matter of fact, I doubt that we are going to get them here in time, so why don't we do this. Do you want to wait until the bell has rang?

Senator MACK. It only takes a few minutes to get there from here.

Senator DOMENICI. After you have a live quorum, can you vote proxies?

The CHAIRMAN. That's correct.

Senator DOMENICI. What is the quorum number on this Committee?

The CHAIRMAN. Ten. We are getting close. We have nine. We need one other Member and then we are permitted to take the vote. Proxies must count, but we must have a quorum of Senators here and present and voting in order for that to comply with all of the technicalities.

Senator SHELBY. Mr. Chairman, I don't see any on the other side here yet.

The CHAIRMAN. Senator Sarbanes is in the back trying to get one or two of his colleagues. He has been here. It was his idea that we try to vote before going down to this vote because then attempting to bring us all together would be a little bit difficult.

Senator DOMENICI. You know, at one time years ago we had a live quorum, you try to get a quorum together from which we waited for proxies, and proxies then voted and we thought we had the right number of Senators and it was all being televised, like some of these, somebody was watching it. We got to the Floor and were thankful they told us a week in advance, they pulled out a TV thing that said you were one short and so you don't have a quorum, so do you want to go through a big parliamentary deal?

The CHAIRMAN. That's what the Chair was advised by Counsel, actually by our Staff Director, who said that we could find our-

selves not in technical compliance if we were to do this. We often do this as it relates to routine matters, routine business, we have a rolling quorum, or the reporting of nominations on noncontroversial nominations, but I don't believe in this instance it would be wise to be slipshod.

Senator FAIRCLOTH. Mr. Chairman, is somebody coming?

The CHAIRMAN. We're attempting to—Senator Hatch has been notified, Murkowski. Apparently their offices say that they have been advised and they will be on their way. It's our hope that they will come here before the vote, they will hold the vote for us, we are told. We have advised them that we have this Committee in process and that we intend to after we vote—both Senator Murkowski—is he on his way? We need one more.

If anybody wants to make a statement, now is the opportunity.

Senator DOMENICI. I think you should take a chance without the quorum and just think of all the lawyers fees that would generate.

The CHAIRMAN. You mean just do it this way and say that's been a custom of the Senate?

Senator DOMENICI. Yes, and then there would be lawyers briefing it forever. We could get into the appellate court, raising a field of jurisdiction. Could be a whole new field.

Senator BENNETT. Mr. Chairman, I remember sitting in the gallery literally on New Year's Eve, 1970, the last session of the House that John McCormick presided over as Speaker. He looked out over the body and there were members coming and going, trying to get a quorum, and he said the Chair recognizes that the gentleman from New Jersey is present on the Floor and has not answered his name when it was called and instructs the Clerk to note that he is present and so record him. The Chair recognizes that the gentleman from Third District in California and so on, and he recognized about nine members of the House and said that makes 217 present and the Chair is 218. The quorum is present and the bill is passed and the House is adjourned. So you might try that, but I don't recommend it——

[Laughter.]

The CHAIRMAN. I don't think we would be able to successfully carry that off. Senator Sarbanes has suggested we go and vote but they are holding the vote for us.

Senator BENNETT. We have 7 minutes and another 5, this end of the building.

[Pause.]

The CHAIRMAN. A quorum is here and present. The North Pole and Illinois have arrived. The Committee will undertake the vote on the issuance on the enforcement of the subpoena. As I have indicated previously, I recommend that this Committee order and direct that Mr. Kennedy comply with our subpoena of December 8th by no later than 9 a.m. tomorrow. The Clerk will call the role.

The CLERK. Chairman D'Amato.

The CHAIRMAN. Aye.

The CLERK. Mr. Shelby.

Senator SHELBY. Aye.

The CLERK. Mr. Bond.

Senator BOND. Aye.

The CLERK. Mr. Mack.

Senator MACK. Aye.
The CLERK. Mr. Faircloth.
Senator FAIRCLOTH. Aye.
The CLERK. Mr. Bennett.
Senator BENNETT. Aye.
The CLERK. Mr. Grams.
Senator GRAMS. Aye.
The CLERK. Mr. Domenici.
Senator DOMENICI. Aye.
The CLERK. Mr. Hatch.
The CHAIRMAN. Aye, by proxy.
The CLERK. Mr. Murkowski.
Senator MURKOWSKI. Aye.
The CLERK. Mr. Sarbanes.
Senator SARBANES. No.
The CLERK. Mr. Dodd.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Kerry.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Bryan.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Boxer.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Moseley-Braun.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Murray.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Simon.
Senator SIMON. No.
The CHAIRMAN. The Clerk will announce the vote.
The CLERK. Ayes are 10, the noes are 8.

The CHAIRMAN. The Committee hereby orders and directs that Mr. Kennedy comply with our subpoena of December 8, 1993, by no later than 9 a.m. tomorrow, 1995—excuse me—our subpoena of 1995 by no later than 9 a.m. tomorrow. If Mr. Kennedy refuses to comply with the Committee's order, I will convene the Committee at 10 a.m. tomorrow to vote to initiate procedures pursuant to Section 5(b) of the Senate Resolution 120 to enforce the Committee's subpoena.

Committee stands in recess.

[Whereupon, at 2:16 p.m., the hearing was concluded.]

[Appendix supplied for the record follows:]

MEMORANDUM

To: Chairman Alfonse M. D'Amato and Senator Paul S. Sarbanes

From: Richard Ben-Veniste, Neal Kravitz, Lance Cole, Glenn Ivey, and James Portnoy

Re: Whether the Committee Should Vote to Seek Enforcement of the Kennedy Subpoena

Date: December 14, 1995

I. INTRODUCTION

The Special Committee has issued a subpoena for notes of a November 5, 1993 meeting among attorneys from the White House Counsel's Office, who represented the President and the First Lady in their official capacities, and attorneys representing President and Mrs. Clinton in their personal capacities. The White House and the President's personal counsel have asserted that the meeting is privileged.

The Special Committee must vote to enforce the subpoena if it is to overcome the assertion of privilege and obtain the information that has been subpoenaed. The Chairman has directed the Committee's counsel to review the legal issues involved and seek to find a way to accommodate the Committee's investigative needs without provoking a constitutional confrontation between the Congress and the President. If such an accommodation cannot be reached, the Senate (through the Office of the Senate Legal Counsel) will be fighting the White House Counsel's Office and the President's personal counsel in federal court. The Committee should make every possible effort to avoid such a confrontation.

In our discussions with Majority counsel we have emphasized the strong likelihood that the Committee can obtain virtually all the information it needs to satisfy its investigate mandate without provoking a constitutional confrontation. Utilizing the framework proposed by the President's personal counsel at Williams & Connolly (discussed in more detail in section IV below), the Committee has the basis to resolve this matter. If the Committee rejects that proposal and continues on an accelerated pace toward an unnecessary constitutional confrontation, it will be acting contrary to normal congressional practice and historical precedent. It is well-settled that Congress must exercise special care when seeking to compel information from the Executive Branch (the authorities for this proposition are set

out in section III below). Here there is no evidence that the information sought relates to any illegal or improper conduct, or even would contribute anything substantial to the factual record already developed by the Committee. Under these circumstances, enforcement of the subpoena is ill-advised and would constitute an abuse of the powers of the Senate.

II. THE WILLIAMS & CONNOLLY AND WHITE HOUSE SUBMISSIONS SET FORTH A LEGITIMATE CLAIM OF PRIVILEGE, AND THE CHAIRMAN AND OTHER MEMBERS OF THIS COMMITTEE HAVE STATED REPEATEDLY THAT THE COMMITTEE SHOULD NOT INVADE A LEGITIMATE PRIVILEGE.

Williams & Connolly and the White House have presented a number of arguments as to why the November 5 meeting is protected by several well-established privileges: the attorney-client privilege; the common interest doctrine; and potentially the executive privilege (although that privilege has not been asserted here). Williams & Connolly also has asserted that Mr. Kennedy's notes of the meeting, which are the subject of the Committee's subpoena, are protected by the attorney work product doctrine. In particular, Williams & Connolly argues that the notes are "opinion work product" and as such are subject to the highest level of protection under the work product doctrine.

The Majority apparently questions the validity of these claims of privilege, yet the Majority has presented no legal analysis or rationale for overcoming the legal arguments put forth by the White House and Williams & Connolly in the memoranda submitted to the Committee. Moreover, the Senate Legal Counsel has indicated a willingness to evaluate the memoranda for the Committee, but has not been provided the time to do so.

Whether these vigorously asserted claims of privilege have merit is important. Throughout these hearings the Chairman and the Ranking Member have taken the position that the Committee will respect the attorney-client privilege and will not seek to inquire into confidential communications between a lawyer and client for the purpose of giving or receiving legal advice. For example, during the hearing testimony of Thomas Castleton on August 3, 1995, Chairman D'Amato confirmed that Mr. Castleton need not testify about conversations with his attorney. (Aug. 3, 1995 Hrg. Transcript, p. 31.) The Chairman took the same position during the testimony of Randall Coleman, David Hale's attorney. On December 1, 1995, Minority Counsel sought to question Mr. Coleman about matters relating to his representation of Mr. Hale. Despite the fact that Messrs. Coleman and Hale had met with a reporter and discussed the same matters, the Chairman limited the questioning to matters that did not intrude upon Mr. Hale's communications with his attorney and risk a waiver of the privilege. The

Chairman explicitly recognized the danger of a waiver and accordingly ruled that the questioning of Mr. Coleman be limited. (Dec. 1, 1995 Hrg. Transcript, p. 45.)

These two examples are consistent with the position the Committee has taken throughout these hearings. Yesterday the Chairman indicated that the Committee's counsel should review the legal memoranda submitted by the White House and Williams & Connolly carefully and evaluate the claims of privilege. (Dec. 13, 1995 Hrg. Transcript, p. 21). Recognition of valid claims of privilege has been the practice of the Committee throughout these hearings. The same rules that apply to other witnesses should apply to the lawyers for the President, whether they represent him in his official capacity or in his personal capacity.

The position that the Committee has taken in recognizing valid assertions of privilege is both appropriate in this particular instance and in accord with the general practice of congressional committees. The reasons that congressional committees generally recognize legitimate claims of privilege, particularly claims by a co-equal branch of government, are summarized in section III below.

Here there are other compelling reasons to respect the claims of privilege that have been asserted by the White House and the President's personal counsel. As discussed in section IV below, the White House and the President's personal counsel have proposed a procedure by which the Committee can obtain the information it is seeking without intruding on these privileges. At a minimum, to refuse to test that approach, where failing to do so will result in a court battle between the President and Congress, may suggest the appearance of partisanship, undermining the Chairman's repeated expressions of the desire to conduct fair, objective, nonpartisan hearings.

III. IT IS WELL ESTABLISHED THAT A CONGRESSIONAL COMMITTEE SHOULD NOT ATTEMPT TO OVERRIDE A VALID PRIVILEGE ABSENT COMPELLING CIRCUMSTANCES, AND EVEN THEN ONLY AFTER A CAREFUL BALANCING OF THE INTERESTS INVOLVED.

Congressional attempts to inquire into privileged executive branch communications are rare, and with good reason. By definition, such efforts provoke a constitutional confrontation.

Moreover, Congress' efforts to invade privileged executive branch communications have met with little success. The courts have resisted adjudicating congressional attempts to inquire into privileged communications. For example, in United States v. House of Representatives, 556 F. Supp. 150 (D.D.C. 1983), the district court refused to determine whether Reagan Administration E.P.A. Administrator Anne Gorsuch properly withheld documents subpoenaed by a committee of the House of Representatives. Instead, the court

"encourage[d] the two branches to settle their differences without further judicial involvement." Id. at 152.

Indeed, only once in the history of the nation have the courts required the disclosure of confidential presidential communications, and even then, the disclosure was to a grand jury, not to the Congress. United States v. Nixon, 418 U.S. 683 (1974).

The D.C. Circuit has long held that presidential communications are "presumptively privileged." Nixon v. Sirica, 487 F.2d 700, 705 (D.C. Cir. 1973). In other words, a congressional committee seeking to inquire into presidential communications bears a heavy burden to demonstrate that it has a proper basis to do so. That burden can be met "only by a strong showing of need by another institution of government -- a showing that the responsibilities of that institution cannot responsibly be fulfilled without access to records of the President's deliberations . . . ." Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725 (D.C. Cir. 1974). Moreover, the committee must prove that "the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions." Id. at 731.

Where, as here, the competing constitutional interests of the legislative and executive branches are implicated, the courts have balanced alternative interests and proposals to determine "which would better reconcile the competing constitutional interests." United States v. American Telephone and Telegraph Co. (ATT I), 551 F.2d 384, 394 (D.C. Cir. 1976). In this regard, the court instructed that "each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation." United States v. American Telephone and Telegraph Co. (ATT II), 567 F.2d 121, 127 (D.C. Cir. 1977). As such, even if the Committee had a compelling need for the privileged information -- which it does not -- the Committee still would be required to balance its need for the information against the competing interests identified by Williams & Connolly and the White House. It has not done so.

IV. THE PROPOSAL PUT FORWARD BY WILLIAMS & CONNOLLY SHOULD BE APPLIED BY THE COMMITTEE BEFORE IT SEEKS TO ENFORCE THE SUBPOENA. IF POSSIBLE, THE COMMITTEE SHOULD OBTAIN THE INFORMATION IT SEEKS WITHOUT PROVOKING AN UNNECESSARY CONSTITUTIONAL CONFRONTATION.

Williams & Connolly has proposed a framework for resolving this crisis that is both reasonable and workable. Williams & Connolly's proposal would enable the Special Committee to obtain all of the information it legitimately needs

without invading the President's well-recognized right to communicate in confidence with his lawyers.

From the time the disagreement about the discoverability of the November 5, 1993 meeting first arose, the Majority has taken the position through its Special Counsel that there are two questions to which the Committee needs answers: (1) did White House officials convey to the Clintons' private lawyers confidential government information, such as information learned from Treasury officials about RTC criminal referrals; and (2) did the Clintons' private lawyers direct the White House officials to use their official positions to obtain additional confidential government information relevant to Whitewater-related matters.

Williams & Connolly's proposal would permit the Special Committee to obtain sufficient information to answer both of these questions. At pages 38-39 of their submission, Williams & Connolly proposes that the Special Committee take the following steps:

1. Ask every White House official present at the meeting what he knew about official government information at the beginning of the meeting. (As a result of the Clintons' prior waivers of attorney-client and executive privileges, the Committee already has obtained this information.)

2. Assume that the White House officials present at the meeting communicated to the private lawyers everything they knew about such information.

3. Ask the White House officials general questions about the purposes of the meeting.

4. Test the responses it receives about the meeting's purposes by asking what steps White House officials took following the meeting.

5. Ask why White House officials took whatever steps they took following the meeting. This would include asking whether White House officials took these steps as a result of anything that occurred at the meeting (as long as this question could be answered without divulging confidential communications from the meeting).

V. CONCLUSION

As Williams & Connolly points out in its submission, this type of step-by-step approach is commonly employed whenever sensitive privilege issues like these arise in civil litigation. Here the need for compromise and accommodation is far greater. As we have emphasized to Majority Counsel, it is important that we consider the longer term consequences of traveling the road on which the Committee appears to

be headed. As the precedents set forth above provide, the Congress has a special obligation to make all reasonable efforts to avoid unnecessary confrontations with the Executive Branch. The Special Committee should honor this constitutional obligation by applying the framework proposed by Williams & Connolly.

It is our view that the Committee should pursue negotiations with the relevant parties and remain open to further constructive proposals to avert confrontation.

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December 14, 1995

John M. Quinn
Counsel's Office
The White House
Washington, D.C.

Dear Mr. Quinn:

You have asked my opinion whether the communications in a meeting between lawyers on the White House staff, engaged in providing legal representation, and lawyers privately engaged by the President are protected by the attorney-client privilege. In my opinion they are so protected.

The facts, in essence, are that a conference was held among lawyers on the White House staff, and lawyers who had been engaged to represent the President personally. The conference concerned certain transactions that occurred before the President assumed office but which had significance after he took office. The governmental lawyers were representing the President ex officio. The other lawyers were retained by the President to provide private representation to him. On this basis, it is my opinion that the attorney-client privilege is not waived or lost.

A preliminary question is whether the attorney-client privilege may be asserted by the President, with respect to communications with White House lawyers, as against other departments and agencies of Government, particularly Congress and the Attorney General. There are no judicial decisions on this question of which I am aware. However, Presidents of both political parties have asserted that the privilege is thus effective. This position is in my opinion correct, reasoning from such precedents as can be applied by analogy. Accordingly, in my opinion the President can properly invoke attorney-client privilege concerning communications with White House lawyers.

The principal question, then, is whether the privilege is lost when the communications were shared with lawyers who represent the President personally. One way to analyze the situation is simply to say that the "President" has two sets of lawyers, engaged in conferring with each other. On that basis there is no question that the privilege is effective. Many legal consultations for a client involve the presence of more than one lawyer.

Another way to analyze the situation is to consider that the "President" has two legal capacities, that is, the capacity ex officio--in his office as President--and the capacity as an individual. The concept that a single individual can have two distinct legal capacities or identities has existed in law for centuries. On this basis, there are two "clients," corresponding to the two

legal capacities or identities.

The matters under discussion were of concern to the President in each capacity as client. In my opinion, the situation is therefore the same as if lawyers for two different clients were in conference about a matter that was of concern to both clients. In that situation, in my opinion the attorney-client privilege is not lost by either client.

The recognized rule is set forth in the Restatement of the Law Governing Lawyers, Section 126 (Tent. Draft No. 2, 1989), as follows:

> If two or more clients represented by separate lawyers share a common interest in a matter, the communications of each separately represented client...
>
> (1) Are privileged as against a third person...

Inasmuch as the White House lawyers and the privately engaged lawyers were addressing a matter of common interest to the President in both legal capacities, the attorney-client privilege is not waived or lost as against third parties.

Geoffrey C. Hazard, Jr.

INVESTIGATION OF WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

EXECUTIVE SESSION

FRIDAY, DECEMBER 15, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

The Committee met at 10:15 a.m., in room 216 of the Hart Senate Office Building, Senator Alfonse M. D'Amato (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The CHAIRMAN. The Committee will come to order.

We meet this morning to address the issue of the failure of Mr. Kennedy to respond to the subpoena issued by this Committee.

I want to first observe that I am very concerned that the White House has put us in this position where the Committee is forced to spend far too much time and energy to obtain relevant evidence which we are entitled to, and which should have been produced upon request.

Let me give you an example. Just yesterday, after forcing the Committee to write many letters and make numerous requests and indicate that we would subpoena information and spend hours in negotiation, the White House finally released a letter that Mr. James Hamilton, had sent to the President on January 5, 1994.

Now this letter was first requested in August. So I use this as an example in stating that this is not "cooperation." If, indeed, the letter was something that we were not entitled to, then we should not have had to go to the point of issuing a subpoena, or threatening to issue one, and that is what we have faced. Even worse, as soon as the White House produced this purportedly, and I quote, "highly-sensitive document" to the Committee, they release it to the media.

Why did the Committee have to waste all this time and energy—and this is just an example of a pattern of delay which this Committee has encountered in dealing with the White House. It is disingenuous to say that they have been cooperative.

Over the past week the White House has forced this Committee to spend more time and energy in an attempt to obtain the notes of former Associate Counsel to the President William Kennedy. Mr. Kennedy took these notes at a November 5, 1993, Whitewater defense meeting held at the law firm of Williams & Connolly. Kennedy's notes may contain critical evidence with regard to at least six areas of inquiry that the Special Committee is now making its inquiry into.

On December 8, 1995, the Committee issued a subpoena to Mr. Kennedy for his notes. And on December 12th, Mr. Kennedy advised the Committee that at the direction of President Clinton he would not comply with the Committee's subpoena.

After considering the legal arguments raised by President and Mrs. Clinton's personal lawyers and the White House Counsel, I overruled the objections based on the attorney-client privilege and the work product doctrine. The Committee then voted to order and direct Mr. Kennedy to produce the notes by 9 a.m. today.

At yesterday's hearing I indicated that the Committee would be willing to agree to two of the conditions in the White House letter. The White House has never responded to that proposal.

Now, I must report to the Committee that as of this morning Mr. Kennedy has refused to comply with the Committee's subpoena. Accordingly, I now ask the Committee to report a Resolution to the Full Senate directing the Senate Legal Counsel to bring a civil action to enforce the Committee's subpoena to Mr. Kennedy.

It is unfortunate that we have come to this point, but the Committee has no choice but to seek to obtain Mr. Kennedy's notes. This Committee and the American people have a right to know the truth about Whitewater.

I would ask if the Members of the Committee have a copy of the proposed Resolution—and I hope that they do.

[Members affirmatively so indicate.]

The CHAIRMAN. A quorum is present. I will ask the Clerk to call the roll on whether the Committee should report the Resolution to the Full Senate directing the Senate Legal Counsel to enforce the Committee's subpoena to Mr. Kennedy.

OPENING COMMENTS OF SENATOR PAUL S. SARBANES

Senator SARBANES. Mr. Chairman, I would like to be heard on the Resolution.

The CHAIRMAN. Certainly.

Senator SARBANES. And I assume there may be other Members who would wish to be heard, although I am not certain of that.

The CHAIRMAN. Absolutely.

Senator SARBANES. Mr. Chairman, I think that this Committee is needlessly provoking a confrontation with the White House, and it is my strongly held view, as I indicated yesterday, that this has now turned into a political game and is being done for political reasons.

Yesterday, the White House came forward with a proposal that I thought was very forthcoming, and which I think the Committee should then have worked with to try to fashion a way of obtaining this information and not intruding upon what is a legitimate privilege.

The White House in effect said, we will provide the notes but we want certain safeguards with respect to them. I think the Committee should have explored in a careful and intensive way those safeguards and tried to work out an accommodation. That has not been done. And I think consistently from the outset here there has been an effort to force this issue in such a way as to create a public confrontation which then, of course, becomes a highly-political issue.

We have had very strong legal advice, as indicated yesterday, that the merits of the position—that there is very substantial merit in the position asserted by the White House.

I very much regret that the Majority is proceeding in this fashion because I think we could have avoided this confrontation, and I do not think we should proceed in this manner.

The CHAIRMAN. Senator Moseley-Braun.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Pardon me?

Senator KERRY. Go ahead.

The CHAIRMAN. Senator Moseley-Braun.

OPENING COMMENTS OF SENATOR CAROL MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Mr. Chairman, I would like to associate myself with Senator Sarbanes' remarks and say to you that we knew this was coming, but this really in my opinion is some unnecessary and unfortunate high drama. There is no reason why we could not have attempted to reach some balance, attempted to go over and work with the offer of information and documents that was made. Instead, this proposal that is before us now suggests that balance is being rejected in favor of, again, unnecessary and unfortunate high drama.

I think that is regrettable and I will vote against the Resolution for that reason.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Senator Kerry.

OPENING COMMENTS OF SENATOR JOHN F. KERRY

Senator KERRY. Mr. Chairman, it is my intention to vote no on this Resolution. But I want to explain that that vote of "no" does not suggest, and should not suggest in any way, that I do not think that these notes should not or could not be made available.

I thought that there was a bona fide offer on the table yesterday that could have been pursued. Notwithstanding any feelings by the Chairman or others that there have been prior efforts, I still believe that the confrontation itself is unnecessary at this time.

I am not suggesting by this vote that I am filled with confidence by every witness who has appeared here, or even that the White House could not have perhaps facilitated some of the flow of information at times. I think it could have. But in this case, the privilege is asserted by Mr. Kennedy on instructions, and he does not have the right on his own to respond in the way that the Committee is seeking. The White House has the ability to make that information available, and offered to do so yesterday in a way that I thought opened the avenue for the Committee to avoid this particular vote.

While my vote is "no" on the procedure that we are pursuing, I want this information, and I want all the information; that is the duty and the responsibility of the Committee. It is not our duty to engage in confrontations that are unnecessary. But it is our duty to guarantee that we do this properly, and I think the proper way to do it is to vote "no."

The CHAIRMAN. Senator Simon.

OPENING COMMENTS OF SENATOR PAUL SIMON

Senator SIMON. Yes, Mr. Chairman.

I concur with what Senator Kerry has just said. I think that the offer of the White House should have been pursued and we should avoid almost calculated confrontations. I think that is not in the best interest of anyone. When the Committee initially started—and I have to say, Mr. Chairman I thought from the beginning it was going to be a very political operation—and you did not make it that, to your credit; I think it has now drifted, unfortunately, in that direction.

I think we would be wise at this point not only to say "no" here, but to consider whether we should not let the Special Counsel do his work rather than pursue this further with this Committee.

The CHAIRMAN. Senator Boxer.

OPENING COMMENTS OF SENATOR BARBARA BOXER

Senator BOXER. Thank you very much, Mr. Chairman.

You had an offer yesterday that really met you more than halfway. Therefore, I would agree with my colleagues: I want to have this information and I think we should have this information.

Everytime the Majority has stated, "there is a smoking gun—we need to see it," we have seen the information and it has not happened. But that does not mean we should stop our inquiry. We need to get all the information on the table. You had an offer halfway there. Now, we are forcing a constitutional confrontation involving the entire U.S. Senate.

I still have hopes it can be resolved, Mr. Chairman, I really do, but I will certainly vote against this.

I would ask unanimous consent that we include in the record two letters that I found here waiting for me when I arrived. A letter from Mr. Kennedy's attorney, Paul Castellitto, dated the 14th, and an answer to it, from Mr. Chertoff—a letter from Mr. Chertoff back to him.

I think the correspondence raises some very serious questions. The letter from Mr. Kennedy's attorney talks about a conversation he had with Mr. Chertoff in which he says that Mr. Chertoff said that he would embarrass Mr. Kennedy—he would have marshals come to his home at 2 a.m. to serve him there, and he insinuated that there were other ways the Committee could make Mr. Kennedy's life miserable.

Mr. Chertoff responds to that letter not denying those things, but saying that the letter is incorrect.

This seems to me to be another sad turn of events for our Committee. I would ask that these two letters be placed in the record, Mr. Chairman.

The CHAIRMAN. They will be placed in the record.

I will address the issue raised.

I cannot for the life of me believe that Mr. Castellitto would honestly say to this Committee that he was not authorized to receive the subpoena on behalf of Mr. Kennedy. He appeared here with him. He has been the person speaking with this Committee and with our Counsels for 6 months.

For him to come forward at this point in time and to suggest that he was not authorized to receive that subpoena just demonstrates more of the kind of delay and the kind of tactics that have taken advantage of the good will of this Committee.

To wait until after this issue has come to this point, and to say, "Oh, by the way, I wasn't authorized to receive the subpoena"—and Mr. Chertoff did say, because I already asked him, "What did you say?" He said, "Yes, I told him that if indeed you hold to this, then I will recommend to the Chairman that we issue a subpoena personally to be served again on Mr. Kennedy so that we do not further delay this matter." We will do that. It will be my recommendation after this Committee undertakes this particular decision as to how we will vote on this Resolution, to then put forth to the Committee a request for another subpoena to be personally served on Mr. Kennedy.

I do not concede that the initial service was not proper. I would like to see him make that case, after he has represented a man, been here with him, negotiated for him, that he did not have the legal right to take that subpoena.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. I can understand why Mr. Chertoff would tell him in no uncertain terms that he would think that this would be embarrassing. I would think any attorney would be embarrassed by attempting to raise that question at this time. I think it is absolutely something that is unacceptable, unacceptable whether it be in a court of law or dealing with any Congressional committee, and we reject it.

We are going to have to vote to issue a subpoena personally?

Now that is unacceptable. So I——

Senator BOXER. Mr. Chairman, I totally——

The CHAIRMAN. —just—and I do not respond—I am talking about Mr. Castellitto's response——

Senator BOXER. I understand.

The CHAIRMAN. You have his letter that he left with you. So I am going to tell you what I feel about Mr. Castellitto's trivializing his attorney-client relationship in such a manner that he would deny that he received a subpoena.

Senator BOXER. Mr. Chairman, you have every right to that view. There is a difference between telling someone you are going to serve them personally and telling them——

The CHAIRMAN. I do not—I reject——

Senator BOXER. —you are going to—excuse me—you are going to embarrass them, arrange to have U.S. Marshals come to their home at 2 a.m., and insinuate there are other ways the Committee could make Mr. Kennedy's life miserable.

The CHAIRMAN. I do not believe that would be a fair representation of Mr. Chertoff. His reputation and his integrity speaks for itself.

Senator BOXER. Well, we will put both letters in the record.
The CHAIRMAN. Fine.
Senator MURRAY. Mr. Chairman.
Senator BOND. Mr. Chairman.
The CHAIRMAN. Senator Murray.

OPENING COMMENTS OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

I just have to say, I think it is very unfortunate that this Committee has decided this morning to move in this direction. I think we have all sat through numerous hearings over the last months. We have read piles of information. We have spent a great deal of time going through this, and indeed, at great expense to the taxpayers.

It seems to me that the public would want us to be reasonable and use common sense at this point and continue to negotiate with the White House. I do not think we are that far apart, having looked at what they requested yesterday, for us to come back to them and request a few changes in what they are doing and move forward. That would save us all a great deal of time and it would save the taxpayers a lot of expense.

In making this motion today for the subpoena, we are now going to have to move to the Full Senate, possibly move to a court case, and it is going to cost taxpayers more attorney time, more staff time, and take us a much longer time in the long run.

It seems to me that this would be a good point to sit back and calmly look at this and to calmly discuss this, to get the information that I think this Committee seeks. I think we are very close to doing that.

I will vote "no" on this Resolution because I believe that it is not good for the taxpayers to be paying for this kind of a court case.

The CHAIRMAN. Thank you, Senator.
Senator Shelby.

OPENING COMMENTS OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you.

Mr. Chairman, I think we need to probably go back and consider what this Senate Committee is charged with doing. The Senate Resolution charged this Committee to investigate not only the Clintons' involvement in Madison and Whitewater, but also whether the White House improperly obtained confidential RTC and law enforcement information, and how it used that information, if it was so obtained.

Now this meeting that we are talking about, the November 1993 meeting, think of the time sequence here. It took place just days after the news broke that the Clintons had been named in the Resolution Trust Corporation's request to the Justice Department for a criminal investigation of a failed Arkansas savings & loan owned by the Clinton's business partner in the Whitewater land venture. Hillary Rodham Clinton had represented the Madison Guaranty Savings & Loan as a lawyer. And both Clinton's were mentioned in the criminal referral as possible witnesses.

Why should we, Mr. Chairman, as an investigating committee, compromise with conditions put forth by someone, even the Presi-

dent of the United States, saying, oh, we have a privilege not to give you this information? Why should we ever compromise when we are seeking the truth? We are seeking the truth here, nothing more, nothing less.

It has also been said here today that we were provoking a confrontation with the White House by issuing this subpoena; but, to the contrary, I would say to you that that is not true. The White House is provoking this Committee into possible confrontation by refusing to comply with what we think is a reasonable request to find those notes and send them up here.

I think it is important that we not compromise, we not give in to conditions, Mr. Chairman. That is why I will vote "yes."

Senator BOND. Mr. Chairman.

The CHAIRMAN. Senator Bond.

OPENING COMMENTS OF SENATOR CHRISTOPHER S. BOND

Senator BOND. Mr. Chairman, I think that there are several things that need to be clarified here.

As I indicated yesterday, we have seen time after time, instance after instance of delay and diversion. Certainly, what we are encountering in this instance is nothing but one delay tactic after another.

The absurd assertion that the lawyer who was with Mr. Kennedy is not his lawyer and authorized to receive service is just another in the continuing string of delays that have been utilized by the White House to try to prevent this information being obtained by the Committee in a timely fashion.

As for the question of the privilege—and I understand the President said he is standing up for the "Privilege" and for the "Basic Principle"—here is the principle he is standing for: It is the principle that the President and his wife, prior to coming to Washington, were engaged in real estate and other ventures in Arkansas; and, secondarily, his wife, Hillary Rodham Clinton, was an attorney with the Rose Law Firm representing Madison Guaranty, the failed S&L, which was the piggyback playtoy of Jim McDougal, which was abused and went broke causing loss to the taxpayers.

Now when the President assumes the highest office, lawyers for the President, the Office of the Presidency, come into possession of information which could be of great interest to the law firm and to the lawyer, Mrs. Clinton, who represented Madison Guaranty.

We have seen in other instances where the Federal Government has recovered significant sums. The Kaye Scholer firm was hit with a very significant $40 million penalty for their involvement in the Keating S&L case.

It is possible—we do not know until we see this information—that when the lawyers for the President met with the lawyers for the two Clintons, that the Government lawyers had in their possession and may have turned over to the personal lawyers information which would be very helpful in determining the extent of liability or exposure that the individuals, Mr. & Mrs. Clinton as individuals, might have to the Government.

Now to say that somehow this is privileged is to me shocking on its face. There is a privilege for a Government lawyer to turn over confidential information to a party who potentially—and I only say

"potentially" because we do not know—who potentially has a liability in a Rose lawyer for one of the crooked S&L's that went under?

There has been talk about a good-faith offer to turn this over. This, Mr. Chairman, is not an "offer." It requires us to say that the information I just described, the meeting I just described, was privileged. I do not believe it is. A court can determine it now.

It also says—and No. 4 is the real trick—we have to obtain the concurrence of other investigative bodies. Guess who one of the investigative bodies is? It is an agency under control of the President, the RTC and its successor the FDIC.

You offer with one hand, but you say you have to go to my financial regulatory agency to get concurrence on the conditions I am going to impose on you. That, Mr. Chairman, is why I use the example of the "snipe hunt."

Apparently there are some people who have not been on a snipe hunt. But in Missouri—or in the Ozarks, when we get somebody from say New York who comes out for the first time to visit the Ozarks, we often take him out on a snipe hunt.

We take him out on a nice cold night into the woods and give him a bag and a light, and tell him that we will go out and beat the bushes to drive the snipe into the bag. Sometime late in the evening, or perhaps early in the morning when dawn breaks, the holder of the bag will realize that there are no "snipes," and he has been on a snipe hunt.

Well, Mr. Chairman, we have been offered a snipe hunt, and I do not propose we stand here holding the bag and watching dawn come with no snipe in the bag. That is why I think we need to pursue the orders you have suggested.

Senator MOSELEY-BRAUN. Will the gentleman yield? Would the Senator yield?

The CHAIRMAN. Senator Bond.

Senator BOND. I am finished, yes.

Senator MOSELEY-BRAUN. Thank you.

There are some of us who think there is no snipe at all here.

Senator BOND. Well, I will tell you I will agree 100 percent with my good friend from Illinois. The snipe is this offering. There is no snipe. This is not an offer. That is why I say we would be left holding the bag.

I thank the Chair.

The CHAIRMAN. Senator Hatch.

OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Well if there is no snipe, then the President ought to just simply disclose, it seems to me. I for one, also, hope that there is no snipe here and that the President and other members of the Administration, including the First Lady, have no difficulties. I hope that is so.

But I am deeply troubled by charges of partisanship here, because the issue transcends claims of partisanship and goes to the constitutional prerogatives of Congress and the investigation of wrongdoing at the very highest levels of Government.

We cannot fail the American people or pass on our oath to uphold the Constitution. It is vital that we protect the constitutional prerogatives of the Congress of the United States. Whether it is

Congressional investigations into Watergate, or Iran Contra, or Whitewater, it seems to me we have to fulfill our constitutional obligations. If we were to buckle here today, we could potentially cripple all kinds of oversight hearings that may occur in the future.

So I ask my friends on the other side of the aisle to protect the institutional integrity of the Congress. But no Congress in history —no Congress in history—has been willing simply to recognize the existence of a common law privilege that trumps the constitutionally authorized investigatory powers of Congress.

While we have chosen to defer to clear, legitimate claims of privilege, we must not surrender our constitutional authority. That is what is involved here today.

As for the privilege claim, the President has stated that he is merely asserting the type of attorney-client privilege that any American can claim with respect to his or her own attorney.

I do not think that any of us would disagree that Mr. Clinton, as a private citizen dealing with personal legal troubles, has a claim of attorney-client privilege. I think that goes without saying.

The problem, however, is that we do not have an "ordinary citizen" here. Nor are we in a court of law. An ordinary citizen who has legal trouble does not get to appoint a U.S. attorney, or should I say "U.S. attorneys," does not get to direct the Federal Bureau of Investigation, or exert control over the IRS or the RTC in this case, which is pretty relevant.

We do not, moreover, have a normal court case here. Rather, we have an investigation authorized pursuant to the Senate's constitutional investigatory authority.

Now, Congress has historically taken a limited view to the applicability of a claim of attorney-client privilege against either of its Houses. It is a limited view. The attorney-client privilege exists only as a statutory creation or by operation of the common law.

No statute or rule of the Congress applies the attorney-client privilege to this Body. In fact, both Houses of Congress have explicitly refused to formally include the privilege in their rules. It is questionable whether a court-created rule applies to Congress, especially in light of the fact that the Constitution specifically grants each House of Congress authority to set its own rules.

Historically, as I view it, Congressional committees have entertained the attorney-client privilege only as a matter of discretion. One of the first things the Congress looks to is whether a valid claim of privilege has been asserted—that is, a claim that a court would recognize.

Now, I do not believe that a court would find President Clinton's claim of privilege credible. The meeting over which President Clinton has claimed privilege did not involve a communication between the President and his personal lawyers. Moreover, it is unclear whether any legal advice was given at the meeting, or whether it was merely a political strategy session.

It is also likely that, if a privilege may exist, it was waived. After all, Bruce Lindsey did not serve in the White House Counsel's Office at this time; but, rather, served in the White House's Personnel Office, and was at the meeting. He was not legal counsel to the President in either a personal or a professional capacity.

To say that he represented the Office of the President as legal counsel at this meeting I think is dubious, at best. The information discussed in his presence thus would constitute a waiver of the privilege.

I am also deeply troubled by the fact that White House lawyers were present. These lawyers do not represent the President in his personal capacity. I am concerned about the possibility that Government lawyers who have an obligation first to the American people, as well as to the President, may have passed information to the Clintons' personal lawyers that Counsel's Office may have gained through their official capacities.

There is some indication here that there has been some monkeying around with RTC records. It is a very serious thing. I am not sure that is so, but there is some indication. I believe you will find that there is going to be a lot of indication before this is over. If the White House lawyers gained nonpublic Government information about Whitewater and then passed that information on to President Clinton's personal lawyers, that would be a clear violation of law.

Let me just cite it: 5 C.F.R. 2635.101(b)(3).

For this reason alone it is important that we obtain the notes of that November 5th meeting. Even though the President has promised to cooperate fully with this Committee and to be open on these issues with the American public, he is now attempting to assert a privilege over an important discussion involving Whitewater matters. If the President truly wants to let the American people know what happened and cooperate fully with this Committee, he should fully disclose the notes.

Having said all of that, there is nothing here that will prevent this Committee between now and the time that we act on the Floor from continuing the discussions with the White House and seeing if we can resolve some of these problems.

Look, it is an insult—now I do not know where Ms. Sherburne went to law school, and I am sure she is very, very bright—you do not get to be Associate White House Counsel without so being; I personally do not know her—but I have to tell you, that is an insult to the Committee.

If you look at this offer, this is not even a bona fide good faith offer. It would limit Congress from henceforth and forever, in my opinion in all kinds of ways, from getting into these matters, whether it is Republicans or Democrats involved. And Congress simply cannot waive that privilege and that institutional and constitutional authority just because we want to be nice.

This is pathetic, in my opinion. Let me give her some credit. It is a wonderful way of dodging what the Committee wants to do. I mean, if we were dumb enough to accept this, my gosh, we could affect all future investigations of Congress henceforth and forever. And who knows, we may have a Republican President someday—as unlikely as that seems—and the Democrats may very well be wanting to pursue some things themselves, but this is not a fair offer.

But to make one last point, there is nothing that prevents the White House from sitting down and seeing if we can resolve this so that we do not have to go to a vote on the Floor, we do not have

to go to court, we do not have to go through all the rigmarole that in the end I think is going to embarrass the White House.

Why do that?

I think we have people here on this Committee that would fight to make sure—on this side, that will fight to make sure the President is treated fairly, and I happen to be one of them, and I do not want him abused, or the First Lady abused, and I do not think anybody on this side does.

But the fact is that that offer—I know you folks, if this were reversed and this was a Republican Administration, you would be laughing it out of this Committee. So do not tell me that is a fair offer. You cannot look at it on its face and say it is fair.

Well, I have said enough. I just wanted to make these points because they are important points and it involves a lot more than just one instance here in the Congress. It involves our very constitutional prerogatives, and we have to make sure that they are preserved.

The CHAIRMAN. Senator Faircloth.

OPENING COMMENTS OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

First a brief response to what Senator Kerry said. It says: "Are the notes in the personal possession of Bill Kennedy?" "Yes, they are in Mr. Kennedy's personal possession." Mr. Kennedy could give us these documents. He has a perfect right to do so. But he has been instructed by the White House not to do so.

What is happening is beginning to permeate the mindset of the American people more than we might realize on this Committee.

I want to just very briefly read a few lines from The Wall Street Journal editorial today. It says:

> Today marks a key milestone in the White House defense strategy on Whitewater. Up in New Hampshire, it's the filing deadline for the February primaries. The defense team has managed to obstruct and delay long enough that President Clinton will face no substantial challenge from within his own party. The next objective is to deal with Republicans by stalling everything past next November's elections.
>
> Let's call it the Paula Jones' ploy. The President won a delay of her sexual harassment case until after he leaves office, and is appealing the judge's ruling that deposition can start now. Why shouldn't this work with Whitewater? Promise cooperation as long as you can, but drag out legal proceedings as long as you can.

I think this surmises what we are talking about and what the public is beginning to understand.

Mr. Chairman, I would, if I may, ask that a copy of the Journal editorial be placed in the record.

The CHAIRMAN. So ordered.

Senator FAIRCLOTH. Thank you.

The CHAIRMAN. Senator Bennett.

OPENING STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I had not planned to talk, but given the tenor of the conversation I felt I probably ought to get a few things on the record.

I will vote in favor of the Chairman's motion. I do not do so enthusiastically because I am troubled by this issue of privilege, and I have put it in terms of my own circumstance. I guess we all tend to do that. I postulate this set of facts as a theory:

Suppose I were under some kind of legal attack for something I did prior to coming to the Senate and I sat down with my private attorneys and went through that circumstance, and I had present at those conversations my Senate general counsel. I had him there to advise me on the impact of my position vis-à-vis the Ethics Committee of the Senate, if someone should claim that some circumstance intruded on my right to hold a Senate seat; or that somehow I may have filled out my Ethics Report improperly based on the allegations that were made of my actions prior to coming to the Senate. I would want my Senate counsel to be there even though he had nothing whatever to do with the matter under concern, and I would want him protected with the attorney-client privilege as he talked to my private attorneys.

For that reason, I am troubled with a blanket denunciation of the idea that no one in the White House should have been present at these meetings.

I am not anxious to rush ahead and say no Government lawyer can ever represent an elected official and be protected by attorney-client privilege when talking to the private lawyers of that elected official. I say that because, while I do not expect to ever be in that position, I can postulate a set of circumstances where any of us could be in that position, and I think all of us would want to have our administrative assistant or our general counsel, what have you, present at that meeting.

The reason I will vote with the Chairman on this issue is two-fold. Number one, the number of lawyers that were present at the meeting under concern seems to go beyond the circumstance I have just described. Mr. Lindsey's presence, of course, is particularly troublesome.

The questions I raised the other day—How far does the President's right go? Does he have the right to have the Counsel to the President there? I would argue that he probably does. Does the Counsel to the President have the right to have some more lawyers there? Then does he have the right to have any member of the White House staff who happens to be a lawyer there? And does the right of privilege go on?

I made the point, to carry it to its absurd level that nobody would take, the President clearly does not have the right to have any lawyer working anywhere in the Government there on the grounds that, well, he works for the President.

The question is: Where is the line drawn? This is the old conundrum: "How many whiskers make a beard?" How many lawyers do you put in the room until finally you have lawyers there who do not have a legitimate right and privilege is waived? I think the line may very well be drawn on Mr. Lindsey.

That is the first question that has troubled me through this whole thing. But the main reason I will vote with the Chairman today and that I voted with the Chairman yesterday, is that I do not believe the offer in front of us is a bona fide offer.

I am not a lawyer, but I have settled lawsuits. I have sat down with lawyers. I have sat down with clients who were just as angry as the clients on both sides of this issue, and I have said, all right, now that you have vented your anger about how badly you have been abused by the legal system, the time has come to look at the

reality of this circumstance. Would it not be better for all concerned if you took the other side's offer and settled the case?

If I were advising the President in this circumstance, I would say, Mr. President—all these arguments about privilege to the contrary notwithstanding—is there anything in those notes that you do not want anybody to see? If the answer is "no," give them the notes.

Asserting all of the concerns about this is not a precedent and you will not do it again when there is legal—but, Mr. President, under these circumstances, if there is nothing in the notes that are embarrassing, give them the notes, just as I said to the stockholders of the company that I presided over: I know how mad you are at this suit, but the fact is, prosecuting the suit is hurting business and is hurting you personally. Give them the settlement and be done with it.

As I read the offer that is before us, it strikes me as a very well crafted, calculated attempt to make sure that we will never get the notes. I cannot, in good conscience, support that kind of an effort, which is why I intend to vote with the Chairman. I see I have awakened some folks on the other side, and I will be glad to yield.

Senator MURRAY. Mr. Chairman.

Senator MOSELEY-BRAUN. We were awake all along. We just were edified by your words.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman.

My friend, Senator Bennett, is very thoughtful about these matters and I very much appreciate the kind of calm approach and attitude he brings to this issue, but I was inspired by Senator Hatch's comments to actually take a look at the offer—the letter, the correspondence—from Jane Sherburne in response to this Committee's request for the documents.

I do not know Ms. Sherburne, but I have to say that I am really astounded by the strongness of the words that my friend from Utah uses in describing her legal work.

It seems to me, and I have read other memos of hers, that she has done a fine job and, quite frankly, the letter in my mind, just as a person reading this, is very straightforward. What she says in her response—and this is the response that all of us are being called on to react to—is that they want to turn over the information; they just do not want to waive the privilege.

The offer says in the paragraph here:

We have therefore been working from the beginning to devise a solution that would address both the Committee's interest in disclosure and the President's right to confidential communication with counsel.

She says earlier and I will read it:

And, as you are certainly aware, our concern about disclosing the Kennedy notes has not had to do with the notes themselves, but instead the possibility that disclosure would result in an argument that there had been a waiver (in whole or in part) of the President's privileged relationship with counsel.

Now to look at what she is actually offering. She says, OK, so let's do this:

Specifically, we would be willing to turn over to the Committee the notes taken by Mr. Kennedy at the November 5, 1993, meeting under the following conditions.

I want to talk about those conditions, because we would not be getting to this constitutional confrontation if there were more discussion about what is the offer on the table.

The first condition: That we would agree that it was privileged.

Certainly there are legal scholars, and I would say to my friend from Utah, including my former professor at the University of Chicago, Geoffrey Hazard, who has been recognized as an expert many times, on many occasions, by many committees, Geoffrey Hazard says there is a legitimate privilege here, and there are other expert lawyers who say there is a privilege.

So all they say: Will the Committee say that they think this is a privileged meeting?

The second condition: That the Committee would not argue that the privilege had been waived.

Well, that is not rocket science. If we agree that it has not been waived, then that protects the rights in the future. We do not know what all is going to come from this situation, from these hearings. This certainly can have ramifications that will have constitutional implications for generations.

And so I think it is appropriate, and I relate to my colleague, my other colleague from Utah's position, there is a legitimate issue having to do with waiver.

Point two here is, if the Committee says it is privileged and that it is not waived, it is OK with us.

Senator BENNETT. The Majority is willing to accept numbers 2 and 3, that was made very clear yesterday. The problems are 1, 4, and 5.

Senator MOSELEY-BRAUN. Well, I am getting to—well, one was that the meeting was privileged, but let's go to 4, then:

That the Committee would say to the other investigators, we have all these investigations going on costing the taxpayers all the money that Senator Murray was talking about, that the Committee would say that these other bodies, not prosecutorial bodies but investigative bodies, that the other investigators, the Independent Counsel, the Congressional committee, the Oversight authorities, the Resolution Trust, the FDIC, all these other people that are massaging these documents, that they would agree to our agreement. Now, we certainly have the authority and power to do that.

Senator HATCH. Oh, yes, we do.

Senator MOSELEY-BRAUN. OK, so we have that.

Then finally, the fifth condition: That the Committee would adopt procedures to ensure that this happens on a bipartisan basis.

Now, I am sorry, I said in my opening statement I thought this was unnecessary high drama, and if anything this memorandum and this offer suggests that. I think that we would be better served to undergo and undertake and pursue discussions to try to narrow the gap. What are the quibbling points? What are the points of difference here?

You said you have agreed to number 1. Well, we will say, OK, we all agree——

The CHAIRMAN. No, no.

Senator MOSELEY-BRAUN. You did not agree to number 1? OK, so the Committee does not agree that it is privileged.

The CHAIRMAN. Senator, if I might? And I want to extend everybody the opportunity, but yesterday we communicated very clearly that 1, 4, and 5 were unacceptable. Numbers 2 and 3, by the way, suggestions as it relates to retaining the confidential relationship that a President should have, and every citizen should have, with his or her attorney, we recognize.

Senator MOSELEY-BRAUN. OK, so you say 2 and 3?

The CHAIRMAN. Numbers 2 and 3. And they can have an agreement at any time up until we go to the Floor. Numbers 2 and 3, by the way, come as suggestions that Mr. Chertoff made weeks ago to the White House Counsel in order to protect any valid claim as it relates to the client-attorney privilege.

Senator MOSELEY-BRAUN. Mr. Chairman——

The CHAIRMAN. But Numbers 1, 4, and 5; and 4 in particular, can you imagine this Committee——

Senator MOSELEY-BRAUN. Working on a bipartisan basis. Oh, the horror!

[Laughter.]

The CHAIRMAN. No, no, no. Number 4. Number 4 in particular, imagine that this would be acceptable that we would have to get approval of the FDIC? Why? Why?

Senator MOSELEY-BRAUN. No, no. Not that we would have to get the approval, Mr. Chairman. It says that we would get their concurrence that they would not do it. That once we had gone over it, that would be the end of it.

The CHAIRMAN. And we have to go to the Special Counsel? What would happen——

Senator MOSELEY-BRAUN. We are going to have to go to the Congress, now.

The CHAIRMAN. It would take us who knows how long to ascertain whether we could get an approval, and we would have to start all over again and be right back into the same position if we did not obtain it.

Senator MOSELEY-BRAUN. Mr. Chairman, I am not finished.

The CHAIRMAN. It is totally unnecessary. Now, I think that you and your comments, Senator Boxer, Senator Murray, certainly Senator Kerry, have indicated quite clearly what is in many respects the position that the Chair shares. That is, that we do not need this unnecessary confrontation, and I reiterate that we have an offer on the table that if the White House turns the notes over, we will agree to 2 and 3 and we will have not need to go forward.

But, 1, 4, and 5 are unacceptable. They are nonstarters.

Senator MOSELEY-BRAUN. Mr. Chairman.

Senator SARBANES. Well, Mr. Chairman——

Senator MOSELEY-BRAUN. Thank you.

Mr. Chairman, number 1 is one line. One line.

The CHAIRMAN. Well, one line can be rather——

Senator MOSELEY-BRAUN. The Committee would agree that the November 5, 1993, meeting was a privileged meeting.

Duh?! This is not rocket science. Why would this be a problem?

The CHAIRMAN. If it is not a problem, why should they ask for us to concede that?

Senator HATCH. Mr. Chairman, could I answer that?

The CHAIRMAN. Yes, certainly, Senator Hatch.

Senator HATCH. Now, I have a great deal of respect for my friend from Illinois, and she knows it. We are close friends in this body, and I know she is sincere in making these arguments. But literally the Congress has never agreed, never to my knowledge—now maybe I am wrong, but I do not think so—it has never agreed that the attorney-client privilege applied to it as a body. Never.

Senator MOSELEY-BRAUN. Never? I am sorry, what did you say?

Senator HATCH. I do not think it should. Let me, if I could finish.

It would be in my opinion an abandonment of our Oath of Office if we agreed that an attorney-client privilege applied to the whole Congress, or Congress in general. Plus——

Senator SARBANES. What is the Senator addressing that comment to?

Senator HATCH. That the Committee would agree that the November 5, 1993, meeting was a privileged meeting.

Senator SARBANES. That is right. You said earlier the Committee in its discretion——

Senator HATCH. We are never going to agree that it was a privileged meeting because we do not believe it was, but we will go with 2 and 3 which will honor their claim to the extent that it can be claimed that there is a privilege.

But if this Committee agrees here today, or at any other time, that any meeting was a privileged meeting, it seems to me it could bind future Congresses, future committees, future investigations, and it would be a tremendous mistake. Now maybe that language can be changed so it is acceptable, but I do not see how.

Number 4, I think Senator Bond made a very, very important point, and so did Senator D'Amato. The Committee would secure the concurrence to these terms of "other investigative bodies." Give me a break. We are not going to do that. Why should we? We have the obligation to do our job here.

Now including Independent Counsel? If we decide to do that, fine. But we do not have to, and there are many people who do not think we should—other Congressional committees.

Senator MOSELEY-BRAUN. If my friend——

Senator HATCH. I mean, talk about a way to delay and obfuscate and make it difficult and have more arguments and not resolve these problems and not go forward.

I agree with my colleague from Utah. If there is no problem with the notes, why withhold them? If there is a problem, then we will have to battle it out on privilege.

Senator MOSELEY-BRAUN. Mr. Chairman, my friend from Utah, the letter says that the White House is not looking to withhold——

Senator HATCH. I could go into more, but I just do not see the argument.

Senator MOSELEY-BRAUN. But in terms of the history and the precedent, I think it is important. You have touched on a very important point. Congress has historically and procedurally been prudent when ultimately seeking to invoke common law privilege such as the one that is claimed in this situation. That has been the guidance for us and the precedent that goes before.

Senator HATCH. Yes. We just do not recognize it.

Senator MOSELEY-BRAUN. It is the Rule of Prudence.

All I am saying here is that prudence, I think, would suggest that if we got agreement on half of this, then to talk about number 1, talk about number 4, talk about number 5, before we send this body to the entire Senate for a vote and possibly on to court. I mean, there is no question but we have I think a responsibility in this Committee to be prudent and to work through these issues.

Senator HATCH. If my friend would yield, I agree; we ought to do that between now and the Floor. There is time to do it. We have a few days to do it in. Frankly, we ought to do everything we can to try and accommodate here both ways, but listen, this kind of language just does not make sense.

Senator MOSELEY-BRAUN. I do not think there is a sense on this side that there has been any accommodation, and I would ask the Ranking Member whether that is the case. The sense we have is that there has not been accommodation, it has been very partisan.

Senator SARBANES. Let me say to the distinguished Senator that twice, at least twice during the course of these hearings, the Chairman has said that witnesses did not have to answer questions put to them because of the attorney-client privilege, I say to my distinguished colleague from Utah.

Senator HATCH. Well, I think that is right.

Senator SARBANES. As a consequence of doing that, we did not surrender any constitutional authority.

Senator HATCH. No, and we would not under that circumstance.

Senator SARBANES. And we would be exercising a discretion here in terms of using our authority that would not abridge the authority. That is within the judgment of the Committee to make.

Now, I think that this offer was a good-faith offer. Had the situation been reversed, I would have taken it and said we should have discussion about it to see whether conditions we saw there could be modified or altered, and that did not happen, I say to my colleague from Illinois.

I said at the outset and I think it is increasingly clear. A decision was made on the other side to provoke a confrontation with the President. That makes it a political issue, and I think that is what is at work here, very frankly put.

Senator HATCH. And that is my point.

Senator SARBANES. We are having assertions made here that are extremely unfair. I mean, Senator Faircloth said that Mr. Kennedy could go ahead and turn over these notes. Mr. Kennedy, who is a lawyer, is bound by the attorney-client privilege and, in order to correspond with the ethics of the profession, is required not to turn it over. Actually, he has been put in the middle here in many respects, so it is sort of difficult for him, but this assertion that was made about Kennedy was extremely unfair to him.

But this proposal should have been given careful consideration and an effort should have been made to try to accommodate this issue. As the White House indicated, they were prepared to turn over the notes, but they wanted certain safeguards with respect to the important question of the waiver of the privilege and no effort was made to accommodate that, and we find ourselves here this morning.

Senator BOXER. Mr. Chairman.

The CHAIRMAN. Senator Boxer.

Senator BOXER. I know you want to move along, and I will not be lengthy, but I really want to get the attention of the Senior Senator from Utah for a moment, if I might?

Senator?

Senator MURKOWSKI. She is trying to get your attention.

Senator HATCH. Oh, excuse me.

Senator BOXER. Senator, I have great respect for my friend from Utah, and I was rather surprised at the fact that he would hurt, I believe, someone's reputation as a lawyer the way he did this morning.

Senator HATCH. Well, I——

Senator SARBANES. Now, I——

The CHAIRMAN. Wait, wait, wait. Please.

Senator BOXER. If I might finish——

The CHAIRMAN. Please, please——

Senator BOXER. Mr. Chairman——

The CHAIRMAN. I want to ask my——

Senator BOXER. If I might finish?

The CHAIRMAN. If you want to make an observation——

Senator BOXER. I do. I do.

The CHAIRMAN. I would hope we can do it in a manner that really does not personalize between our Senators.

Senator BOXER. Well, Mr. Chairman——

The CHAIRMAN. If you have a disagreement as it relates to a position, please state it.

Senator BOXER. Mr. Chairman, I will say again that I respect my friend from Utah. May I say that? He is my friend.

Senator HATCH. I am glad to hear that.

Senator BOXER. He is the Chairman of a very important Committee, and he does an excellent job, and we do not agree a lot of the time, but that does not mean we are not civil, nor fail to discuss our differences. Let me just say this:

It was stated during the course of this hearing that one of the Senators for whom I have great respect did not know where this attorney came from, did not know where she went to law school, and I would have to say her work product was demeaned. That is my opinion. It does not have to be shared.

I do not know this woman, but I found out that she is a graduate of Georgetown Law School where she was on the Law Review. Now maybe other Senators went to better law schools, but the fact of the matter is, I do not think we should in fact hold papers up and say, well, I do not know who this person is or where she went to law school.

It turns out that two of the five points in the letter actually came from Mr. Chertoff. So how can we, in other words, condemn someone who tried to, it seems to me, find some middle ground from her standpoint for her client.

I am not going to be repetitive, so let me just conclude here and say to you, Mr. Chairman, we are in budget negotiations. I am on the Budget Committee. They are tough negotiations. We are going to stay in rooms and we are going to do everything we can to come together. This is a difficult task. I would say we are further away on the budget in terms of taxes and cuts and priorities than we are in turning over these papers.

There has been an offer made to turn these papers over. Colleagues say three of the conditions are unacceptable, particularly one is ludicrous and ridiculous. I would like to recommend that our Ranking Member and our Chairman, that the two attorneys on either side spend some time with Ms. Sherburne, with the other attorneys, and try to hammer out an agreement that would be acceptable on all sides.

I think the Senator from Illinois, Senator Moseley-Braun, has pointed out through her questioning of the Ranking Member that this has not been done.

Our Chairman reiterates he wants it done. Our esteemed Chairman of the Judiciary Committee says, look it can be done after we vote today. But we are, every time we do this kind of thing in the Congress, provoking a confrontation needlessly and on partisan lines, and I do not think that the people think very much of this process because they think it is totally partisan.

I do not think that that helps matters at all. So I will rest on that and hope somebody might pick it up as an idea.

Senator MURKOWSKI. Mr. Chairman.

The CHAIRMAN. Senator Murkowski.

OPENING COMMENTS OF SENATOR FRANK H. MURKOWSKI

Senator MURKOWSKI. Mr. Chairman, I think we all regret the action that is contemplated here today, but we are down here to take the action and I think we should move on it.

It is the White House that is forcing this action. Make no mistake about it. It has been said on both sides that we would hope that they would come and respond to the legitimate request that this Committee has made. Maybe they will, but they clearly have not indicated to our satisfaction their willingness to do that up until this point.

Let us not forget that we have been on this since either June or July 1994, and we have learned these matters not by accident but by a process where clearly the Kennedy notes came to the attention of this Committee. As a consequence of that, it is appropriate that this action be taken.

If this were the first issue before this Committee there would be a cry from the press, a cry from the public as to what the White House was attempting to hide. The trouble with this process, Mr. Chairman, is it has gone on so long that the public has become conditioned to the discrepancies associated with the Whitewater issue. They have almost become immune to it because there has been so much. As a consequence, we are being criticized by the other side for proceeding when in reality there is a stonewall action associated with the White House's ability and willingness to cooperate.

So let us be realistic and recognize where we are on this. We are only moving ahead as a consequence of taking extreme measures which we would hope would not be necessary. We have seen the excuse of attorney-client privilege, but it is interpreted into executive privilege, and we all know it.

We have seen efforts to hide, to delay. We have seen witnesses come before this Committee, bright, well-educated people that have had dramatic associations with the Administration at key times, and they simply do not remember. Now, who is kidding who? I do

not think the American public are being kidded. They know these people have more knowledge than they have communicated before this Committee.

We have seen Government lawyers involved in giving personal advice and counsel to the President. Where is the balance in this thing, Mr. Chairman? It is lacking.

So as a consequence, I think it is time to simply move on in the process that we have undertaken to discover and bring the facts to the American people as best we can with the available information that we find as a consequence of the progress that we are making. I would urge the Chairman to proceed with the vote and let us get on with this process because all we are doing now is jawboning and we all know it.

The CHAIRMAN. Senator, did you have anything to add?

Senator SARBANES. I am not quite sure what you are going to do.

The CHAIRMAN. I am going to make a very short comment and take it right to a vote.

I believe that this Committee is entitled to this information. We have made every bona fide effort to work with the White House. We have suggested a methodology for achieving the results.

You cannot say on the one hand we have nothing to hide, but we are concerned about the issue of privilege. We take that off the table and guarantee whatever privilege there should be, but you cannot say it on the one hand and then deny it behind a sheath of technicalities. That is what I perceive to be taking place. We, and the American People, are entitled to this information.

Our offer remains open as it relates to accepting it in the manner which we have described, and as has been amply discussed. The White House is aware of that, and I would hope that we could resolve this situation.

I am going to ask the Clerk to call the roll.

Senator Sarbanes.

Senator SARBANES. Let me just say, I do not at the moment concede the assertion that this Committee has made every bona fide effort in order to try to accommodate this matter. In fact, I think just to the contrary. I think the Majority has moved to provoke a controversy for political purposes; that this is a matter that could have been worked out, if in fact bona fide efforts had been undertaken, and that is not what has happened.

The CHAIRMAN. I am going to ask the Clerk to call the roll on whether the Committee should report this Resolution to the Full Senate, which would direct the Senate Legal Counsel to enforce the Committee's subpoena to Mr. Kennedy.

The Clerk will call the roll.

The CLERK. Chairman D'Amato.

The CHAIRMAN. Aye.

The CLERK. Mr. Shelby.

Senator SHELBY. Aye.

The CLERK. Mr. Bond.

The CHAIRMAN. Senator Bond will be back in a moment.

The CLERK. Mr. Mack.

Senator MACK. Aye.

The CLERK. Mr. Faircloth.

Senator FAIRCLOTH. Aye.

The CLERK. Mr. Bennett.
Senator BENNETT. Aye.
The CLERK. Mr. Grams.
Senator GRAMS. Aye.
The CLERK. Mr. Domenici.
The CHAIRMAN. Aye, by proxy.
The CLERK. Mr. Hatch.
Senator HATCH. Aye.
The CLERK. Mr. Murkowski.
Senator MURKOWSKI. Aye.
The CLERK. Mr. Bond.
Senator BOND. Aye.
The CLERK. Mr. Sarbanes.
Senator SARBANES. No.
The CLERK. Mr. Dodd.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Kerry.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Bryan.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Boxer.
Senator BOXER. No.
The CLERK. Ms. Moseley-Braun.
Senator MOSELEY-BRAUN. No.
The CLERK. Ms. Murray.
Senator MURRAY. No.
The CLERK. Mr. Simon.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Chairman, the ayes are 10; the noes are 8.
Senator SARBANES. Mr. Chairman.
The CHAIRMAN. I want to, if I might——
Senator SARBANES. Did you announce the vote?
The CHAIRMAN. The vote is 10 to 8. The Committee has directed that the matter be directed to the Floor, that the Resolution be taken to the Floor.
I want to bring to the Committee's attention——
Senator SARBANES. Mr. Chairman, on the Resolution, it is the Minority's intention to file a written report setting forth Minority views. I understand a report is required with this Resolution——
The CHAIRMAN. That is correct.
Senator SARBANES. —in any event, and we intend, obviously to file Minority views with respect to this report, which I understand under the rules must be in to the Committee by Tuesday?
The CHAIRMAN. That is correct.
Senator SARBANES. I thank the Chairman.
The CHAIRMAN. I want to bring to the Committee's attention—and I am going to move this as quickly as possible because I know that people have places to go—a matter that is troubling. There was some reference to it.
Yesterday, the Committee received a letter from the attorney representing Mr. Kennedy, Mr. Paul Castellitto. In that letter, Mr. Castellitto claims that Mr. Kennedy was not properly served with the subpoena directing him to produce his notes of November 5th

because the Committee, as a convenience to Mr. Kennedy, served the subpoena on his lawyer here in Washington.

The claim that Mr. Kennedy was not properly served with this subpoena lacks any merit, and the Chair rejects it. For the last 6 months, whenever the Committee has communicated with Mr. Kennedy on any matter it has done so through his Washington lawyer, Mr. Castellitto.

Never during these months did Mr. Kennedy or his lawyer protest that arrangement. There is no question here that Mr. Kennedy received the subpoena issued on December 8, 1995. In fact, on December 12, 1995, his lawyer submitted to the Committee a detailed response to that subpoena on Mr. Kennedy's behalf. In that response he set forth various objections on the merits to the subpoena. Mr. Kennedy's lawyer also passed the subpoena on to the White House and to the Clinton's personal lawyers so they could formulate their responses.

The White House has conceded service. Yesterday, the Chair overruled all objections to the subpoena and, with the concurrence of the Committee, ordered Mr. Kennedy to comply by 9 a.m. today.

Only yesterday, 6 days after this Committee issued this highly-publicized subpoena to Mr. Kennedy, 6 days after Mr. Kennedy's lawyer received this subpoena, 2 days after he submitted a detailed response to the subpoena, and after the Committee ordered Mr. Kennedy to produce his notes of November 5, 1993, did the Committee receive this claim of improper service.

To accommodate Mr. Kennedy's request that he be served the subpoena again, I have directed the U.S. Marshals to hand-deliver to him in Little Rock an identical subpoena to the one his lawyer received on December 8, 1995.

In the meantime, however, we shall proceed to consider the matter of Mr. Kennedy's failure to comply with the subpoena through his attorney.

I am going to ask the Clerk to call the roll as it relates to issuance of the subpoena on this date, returnable December 18th.

Senator SARBANES. Mr. Chairman.

The CHAIRMAN. Yes.

Senator SARBANES. Just for the completeness of the record, and this is a matter that I have only recently become acquainted with, I think the letter from Kennedy's lawyer of December 12th should be included in the record——

The CHAIRMAN. Certainly.

Senator SARBANES. —in which he indicates questions about the status of the subpoena. I think you said that only yesterday did we receive such an indication. Apparently that is not the case. I have just looked through this letter very quickly, but apparently a question had been raised earlier about the status of the subpoena with respect to its service.

I think the other letter should also be included in the record. I think those are the two letters that Senator Boxer referred to earlier, as I understand it. The issues raised are rather interesting, particularly how counsel was interacting with one another. But that is all spelled out in these letters, and I think they ought to be put on the public record.

The CHAIRMAN. So ordered.

The Clerk will call the roll.
The CLERK. Chairman D'Amato.
The CHAIRMAN. Aye.
The CLERK. Mr. Shelby.
Senator SHELBY. Aye.
The CLERK. Mr. Bond.
Senator BOND. Aye.
The CLERK. Mr. Mack.
Senator MACK. Aye.
The CLERK. Mr. Faircloth.
Senator FAIRCLOTH. Aye.
The CLERK. Mr. Bennett.
Senator BENNETT. Aye.
The CLERK. Mr. Grams.
Senator GRAMS. Aye.
The CLERK. Mr. Domenici.
The CHAIRMAN. Aye, by proxy.
The CLERK. Mr. Hatch.
Senator HATCH. Aye.
The CLERK. Mr. Murkowski.
Senator MURKOWSKI. Aye.
The CLERK. Mr. Sarbanes.
Senator SARBANES. No.
The CLERK. Mr. Dodd.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Kerry.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Bryan.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Boxer.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Moseley-Braun.
Senator SARBANES. No, by proxy.
The CLERK. Ms. Murray.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Simon.
Senator SARBANES. No, by proxy.
The CLERK. Mr. Chairman, 10 aye; 8 nay.

The CHAIRMAN. The ayes are 10, the nays are 8, the vote is approved to issue the subpoena.

Let me say this. In no way does this Committee in taking this action concede that the initial subpoena in its service was not proper. But there is some effort—and I am very much concerned, and I think this is an effort to dodge the subpoena.

Evidently, I believe the White House seeks to delay a quick resolution of this matter by instructing Mr. Kennedy and his lawyers to duck the lawful process.

Senator SARBANES. What is the basis for that assertion?

The CHAIRMAN. I will tell you. I was disturbed by the suggestion that Counsel had in his letter from Mr. Kennedy's lawyer that he might transfer his notes to the custody of the White House. These notes have been ordered to be produced by Mr. Kennedy, and any effort by Mr. Kennedy to remove or transfer them, therefore, will meet some serious legal consequences.

Now for a White House and an Administration that claims that it wants to cooperate, if indeed that takes place, I think you will see that it is nothing more than another effort to obstruct us from getting the facts.

You cannot say you want to cooperate on one hand and be entering into this kind of situation. That is what would appear may be the probability and the likelihood for Mr. Kennedy's lawyer at this point in time to suggest that he was not properly served. And to further suggest that they might even transfer these notes to the custody of the White House——

Senator SARBANES. Mr. Chairman, that is extremely unfair. What the letter says—and this is not a large point in the total picture, but we at least ought to operate to some extent in a lawyerly like manner here—and I quote the last paragraph of it, and this is Castellitto's letter:

> It seems to me that it would be a simple matter for the Committee to cure its procedural default. The Committee may issue a new subpoena, which I hereby represent to you that I am now authorized to accept. I earnestly request, however, that the Committee drop the matter of a Kennedy subpoena altogether. There is no legitimate reason for the Committee to be putting Mr. Kennedy through the wringer on the privilege issue. The Committee should direct its energies instead to contesting this matter with the *holders* of the privilege whose instructions Mr. Kennedy must obey. [Mr. Kennedy would be more than happy to transfer physical custody of his notes to the White House if that would make any difference.]

That is a letter to Michael Chertoff, Special Counsel to this Committee.

Earlier in this letter, and indeed in his previous letter, counsel has repeatedly pointed out that his client is sort of caught in the middle. Here it says he is being put through the wringer. In fact, he said in his previous letter:

> For these reasons, Mr. Kennedy must respectfully decline to produce his notes of the November 5, 1993, meeting. I would like to say, in closing, that I believe it is completely inappropriate for the Committee to make Mr. Kennedy the battleground over which the Committee has chosen to fight the White House on this issue. Mr. Kennedy is a private citizen with no stake in this dispute. There is absolutely no reason why the Committee cannot contest this matter directly with the holders of the privilege rather than with him.

So I think that all counsel was suggesting to you was that they wanted to get out of the wringer and out of the middle.

Mr. CHERTOFF. Mr. Chairman, if I can just maybe enlighten the Committee a little bit on this issue. Masked behind the discussion of this is a very important point which I am quite sure that all the lawyers involved here understand.

First of all—and I explained this, obviously, to Mr. Kennedy's lawyer—it is often the case that when a matter moves to court, in order to get a resolution of a legal issue in a dignified fashion, you nevertheless have to enforce the order against a person who has custody of documents. That is not meant to put someone personally on the spot. In fact, during one of my conversations with Mr. Castellitto, I assured him that the Committee did not view his client as behaving in bad motive, but that he was behaving under instructions.

Nevertheless, there is an important point here. It is the law, as I understand it, that there is no power for Congress to seek civil contempt, enforcement by way of civil contempt, against the White

House or an institution in the Executive Branch. Congress may do so against a private citizen.

If these documents were removed from the custody of Mr. Kennedy and returned to the White House, it would have the effect of essentially nullifying Congresses' power to proceed by way of civil contempt to get a court order enforcing this judgment. That would very seriously impair Congresses' ability to execute this subpoena. That is well understood by the attorneys. I want to suggest that with a court order operating against Mr. Kennedy, any effort to move those documents out of his custody where they can be reached by a Federal court into the White House where they cannot be reached by the Federal court would have the effect of seriously impeding the Committee's effort to get the documents.

I am confident that Mr. Kennedy and his lawyer understands. Certainly the White House lawyers understand the tremendous significance of who this is directed against, and they understand that we are proceeding against Mr. Kennedy not out of some personal animus because we understand he is behaving under instructions, but because the law permits us to proceed only against him as a private citizen in order to affect his subpoena.

The Committee is deliberately taking the less intrusive and the less aggressive position of proceeding for civil enforcement. The only other options is criminal contempt, which no one has talked about or wants to raise here.

So I think it is important, Mr. Chairman, for the Committee to understand that Mr. Kennedy is not being brought in here because there is some desire to personally embarrass him; it is because the way the law is we can achieve the more gentlemanly and dignified resolution of this issue in the courts only by proceeding against the notes in his custody rather than proceeding against the White House.

Senator SARBANES. I was only addressing the suggestion that had been made that there was some sort of plot here, and I said there is absolutely no evidence for that. I think the letter of Kennedy's lawyer makes that very clear.

The CHAIRMAN. Well, I wanted to put it on the record that I am very much concerned about what might be an attempt to transfer those notes back to the White House and then put them under a shield to escape the Committee's having the opportunity to get whatever evidence and information they may contain.

Senator SARBANES. Mr. Chairman, there is no basis on the record for that concern.

The CHAIRMAN. I would suggest there is no basis for Mr. Kennedy's attorney to act in the manner in which he has. He is obviously under instructions, and I wonder where he is getting those instructions. I certainly do not think they are from Mr. Kennedy.

Senator SARBANES. There is no basis for that assertion.

The CHAIRMAN. We stand in recess——

Senator SARBANES. None, whatever.

The CHAIRMAN. We stand in recess until 1 p.m., Monday.

[Whereupon, at 11:30 a.m., Friday, December 15th, the hearing was recessed, to reconvene at 1 p.m., Monday, December 18, 1995.]

[Appendix supplied for the record follows:]

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December 14, 1995

VIA TELECOPY (228-0020)

Michael Chertoff, Special Counsel
United States Senate
Special Committee To Investigate Whitewater
Development Corporation And Related Matters
534 Dirksen Building
Washington, DC 20510-6075

Re: William H. Kennedy, III

Dear Mike:

I am writing in response to our telephone conversation this morning and your subsequent letter.

A Committee staff member called me this morning to advise that the Committee was about to go into session to vote on whether to enforce last week's subpoena directing my client, William H. Kennedy, III, to produce his notes of the November 5, 1993 meeting at Williams & Connolly. She said the Committee would likely set a compliance deadline for later today. I replied that, as I had previously noted in my December 12 letter, I did not see how the Committee could seek to legally enforce a subpoena that the Committee never served on Mr. Kennedy.

You then got on the phone. You told me that, up until now, the Committee had treated Mr. Kennedy as a cooperating witness but that, if Mr. Kennedy took the position that he was not served with the subpoena, all that would change. You told me that you would embarrass him. You told me that you would arrange to have Marshals come to his home at 2:00 a.m. and serve him there. You insinuated that there were other ways the Committee could make Mr. Kennedy's life miserable.

I was surprised by your violent reaction to this procedural issue. I hope that it was just rhetorical excess, and that you do not intend to carry out your threat to use the Committee's overwhelming resources to retaliate against my client. As you know, Mr. Kennedy has been remarkably cooperative with the Committee throughout its investigation. He testified at deposition, without subpoena, on November 1, 1995. He traveled to Washington (at great personal inconvenience) on November 29 - 30, 1995, to testify at the hearings, without subpoena, only to be sent home at the end of the day because the Committee decided not to call him after all. He testified at the hearings, without subpoena, on December 5, 1995. The Committee showed its appreciation to Mr. Kennedy for his cooperation by voting to issue a subpoena for his notes directed at him personally. The Committee issued the subpoena, knowing that he was powerless to comply in view of his former clients' instructions to assert the attorney-client privilege; knowing that it was thereby thrusting him into the middle of a legal battle in which he has no personal interest; and knowing that it could just as easily fight this battle directly with the holders of the privilege rather than wage war on him by proxy.

Given that the Committee's stated intent was to provoke a legal confrontation by means of the subpoena, I do not see why I evoked such a hostile response by pointing out the subpoena was not legally served as required by the Committee's own rules. See S. Res. 120, §5(b)(1) (May 17, 1995). Your letter today states that the Committee sent me the subpoena because, in the past, I never objected to accepting the Committee's "numerous communications" with my client. That is correct, but besides the point. A subpoena is not just another communication; it is legal process. But, in its rush to commence this legal confrontation in which my client has no interest, the Committee never bothered to inquire whether I was willing or, more importantly, authorized to accept service of the subpoena. It just came, unwelcome and uninvited. In any event, I alerted the Committee to this procedural issue in my December 12 letter and heard nothing in return until today, and then only because I raised the issue again. I thought the Committee would recognize my courtesy in flagging this issue in advance of its meeting to decide whether to seek compliance.

Your letter states that the Committee now formally asks me to accept service of the December 8 subpoena on Mr. Kennedy's behalf. I do not see that I have the power to do so. The subpoena expired by its own terms on December 12 without having been served. I will be happy to reconsider if you will cite me to any case law supporting your request.

It seems to me that it would be a simple matter for the Committee to cure its procedural default. The Committee may issue a new subpoena, which I hereby represent to you that I am now authorized to accept. I earnestly request, however, that the Committee drop the matter of a Kennedy subpoena altogether. There is no legitimate reason for the Committee to be putting Mr. Kennedy through the wringer on the privilege issue. The Committee should direct its energies instead to contesting this matter with the holders of the privilege whose instructions Mr. Kennedy must obey. (Mr. Kennedy would be more than happy to transfer physical custody of his notes to White House if that would make any difference).

Please enter this letter in the Committee's record for my client's protection.

Yours truly,

Paul Castellitto

Paul V. Castellitto

cc: Richard Ben-Veniste,
Minority Special Counsel

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United States Senate
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
WASHINGTON, DC 20510–6075

December 14, 1995

Via Facsimile and Mail

Paul Castellito, Esq.
Sharp & Lankford
1785 Massachusetts Ave., N.W.
Washington, D.C. 20036-2117

Dear Mr. Castellito:

I have received your letter of December 14.

Your characterization of my earlier conversation with you is incorrect. What I said to you was that we had always been pleased to extend to Mr. Kennedy the courtesy of dealing through you, including directing all requests through you. I did not threaten or insinuate anything with respect to Mr. Kennedy. I did observe that if you were unwilling to receive service on behalf of your client, we would have to effect service directly with the marshals. That is an unseemly, unnecessary, and wasteful exercise, and is inconvenient to everyone..

What you omit from your letter is my statement that we have tried to deal with Mr. Kennedy cooperatively and that we have accommodated him where possible. I emphasized that the Committee's action is not directed against Mr. Kennedy because of a desire to sanction him personally. Rather, as I explained, the Committee understands that Mr. Kennedy is following his client's instructions. Nevertheless, as you must know, from a procedural standpoint a direction to comply with document production must be addressed to the attorney in possession of the document to make the matter ripe for court action.

You err in saying that there is a defect in service of the subpoena. You received the subpoena and your client has actual notice. Contrary to your current position, on December 12 you entered no objection to service, but limited yourself to "confess[ing] . . . I am somewhat uncertain about the status of the subpoena." More important, you then responded on the merits by "submitting . . . [a] brief on his behalf." That brief indicated that "Mr. Kennedy must respectfully decline to produce his notes. . . ." Accordingly, you waived any objection to service. See, e.g., Saper v. Hague, 186 F.2d 592 (2d Cir. 1951)(Swan, L. Hand & A. Hand JJ.)(noting that defects in service of subpoenas are waived if not timely raised).

Only now, after the subpoena return date has passed, have you attempted to rewrite history by stating that the subpoena was not properly served. A court might well consider that you deliberately withheld objection until after the return date had expired to eliminate the opportunity for direct personal service.

In any event, today you accepted service of the order directing Mr. Kennedy to comply with the subpoena which is incorporated by reference. Accordingly, Mr. Kennedy is unquestionably under a legal mandate to comply by 9:00 AM tomorrow. In view of this mandate, I want to caution you against the suggestion that Mr. Kennedy might transfer the documents from his own custody to the White House.

Very truly yours,

Michael Chertoff
Special Counsel

cc: Richard Ben-Veniste, Esq.

WSJ
Op-Ed
12/15/94

REVIEW & OUTLOOK

Will Sarbanes Filibuster?

Today marks a key milestone in the White House defense strategy on Whitewater. Up in New Hampshire, it's the filing deadline for the February primaries. The defense team has managed to obstruct and delay long enough that President Clinton will face no substantial challenge from within his own party. The next objective is to deal with Republicans by stalling everything past next November's elections.

Let's call it the Paula Jones ploy. The President won a delay of her sexual harassment case until after he leaves office, and is appealing the judge's ruling that deposition can start now. Why shouldn't this work with Whitewater? Promise cooperation as long as you can, but drag out legal proceedings as long as you can. Hillary admirer Judge Henry Woods will surely be overturned in ruling that Independent Counsel Kenneth Starr lacks jurisdiction in one case involving Arkansas Governor Jim Guy Tucker, but it does run the clock. Governor Tucker now wants his other case delayed while he litigates with the New York Times over access to a reporter's notes.

In response to a Congressional subpoena for notes on a suspicious-looking meeting on November 5, 1993, meanwhile, the White House first offers an attorney-client privilege claim that most lawyers rate in the tenuous-to-frivolous range. For starters, Mr. Clinton wasn't party to the meeting itself, normally a condition for such privilege claims, whether with a lawyer or in the confessional.

Then the White House dangles a claim of executive privilege, a more serious claim even though it lost for Richard Nixon. But it hasn't officially invoked executive privilege yet; two sets of litigation take longer than one. Finally, it faxed a deal to the D'Amato Whitewater Committee yesterday in which an offer to divulge the notes was freighted with dilatory restrictions. The committee rejected this ploy and voted to enforce the subpoena.

As the subpoena wends its way through the Congressional process, Senator Paul Sarbanes has to decide whether to join the Paula Jones ploy. On the Whitewater Committee, he's been the point man of the Democratic defense, and when the subpoena resolution reaches the Senate floor, probably sometime next week, he has the option of conducting a filibuster. It would guarantee more delay, and if he holds enough Democrats, he could block the resolution permanently.

Sen. Sarbanes and other Democrats, though, will have to consider whether the Paula Jones ploy might backfire. Newt-bashing didn't save the day in San Jose on Tuesday, where a concerted anti-Gingrich campaign left Republican Tom Campbell with 59% of the vote in a district where George Bush got 30%. Do Congressional Democrats really want to lash themselves to Bill Clinton's Whitewater mast, or is it time to look for the lifeboats?

Defending attorney-client or executive privilege won't be much fun. A filibuster would give us time to look up all the Sarbanes quotes on the subject from the Watergate era. Then there's the merit of the claim. The White House says the purpose of the November 5 meeting was to brief the new private counsel for the Clintons on a "torrent" of press coverage and other matters relating to Whitewater. But take a look at the chronology below—all the action leading up to the meeting took place before heavy press coverage of Whitewater. And further revelations keep coming; the November 5 meeting itself was disclosed only late last month through questioning of Mr. Lindsey by Sen. Lauch Faircloth. If William Kennedy's notes on the meeting include something like "get Jean Lewis off the Madison case," we have a conspiracy to obstruct justice.

Just last week, too, the White House reported that the mystery phone number (202) 628-7087 was a trunk line bypassing the White House switchboard in case it was overloaded "and may have been provided to certain individuals for that purpose." In other words, Hillary Clinton was bypassing the switchboard to call into the White House the night of Vincent Foster's death. And we learned that Whitewater documents were passed from Mr. Foster to Webster Hubbell during the Presidential campaign, and supposedly were stored in Mr. Hubbell's Washington basement. When they were delivered to Clinton attorney David Kendall, he returned them to the Rose Law Firm, where they later came to the attention of Senate investigators. Mr. Kendall's initiative in this matter suggests that Arkansas legal habits are a little much for a firm like Williams & Connolly.

This is also a point for Congressional Democrats to ponder in deciding whether to join the Paula Jones ploy. If they filibuster, it will be a wondrous spectacle; if they don't, their silence will have an eloquence of its own.

Whitewater, 1993

MAY 5: Small Business Administration Administrator Erskine Bowles informs White House Chief of Staff Thomas "Mack" McLarty of confidential criminal fraud investigation of Little Rock municipal judge David Hale, owner of SBA-charted Capital Management Services.

JULY 21: In Little Rock, the FBI executes a search warrant on Mr. Hale's office.

JULY 22: White House Counsel Bernard Nussbaum and Maggie Williams, chief of staff to Hillary Clinton, search the office of the late White House Deputy Counsel Vincent Foster for a second time. Months later, it is revealed that Whitewater files were removed from the office.

AUG. 16: Paula Casey, a longtime associate of the Clintons, takes office as U.S. Attorney for the Eastern District of Arkansas.

SEPT 20: Ms. Casey turns aside plea bargain attempts from Mr. Hale's lawyer, Randy Coleman. Mr. Coleman had offered to share information on the "banking and borrowing practices of some individuals in the elite political circles of Arkansas."

Senior White House aide Bruce Lindsey discusses the Hale matter with Clinton commodities adviser James Blair.

SEPT 21: An assistant U.S. attorney in Ms. Casey's office notifies SBA Administrator Bowles of the planned indictment of Mr. Hale.

SEPT. 29: Treasury Department General Counsel Jean Hanson warns Mr. Nussbaum about confidential criminal referrals the Resolution Trust Corp. plans to issue in the case of Madison Guaranty Savings & Loan. The referrals mention the Clintons and Arkansas Gov. Jim Guy Tucker.

OCT. 4 or 5: Mr. Lindsey informs the president about the referrals. He later tells Congress he did not mention any specific targets of the referrals.

OCTOBER 6: President Clinton meets with Gov. Tucker at the White House.

OCT. 14: A meeting is held in Mr. Nussbaum's office with senior White House and Treasury personnel to discuss the RTC and Madison.

OCT. 27: Paula Casey rejects the RTC's first criminal referral in the Madison case.

Nov. 5: White House lawyers meet with the Clintons' personal attorneys at the offices of Williams & Connolly. Present for the White House: Mr. Nussbaum; Mr. Lindsey, a presidential aide not attached to the Office of White House Counsel; Associate White House Counsel William Kennedy III, a former partner in the Rose Law Firm; and Associate White House Counsel Neil Eggleston. Present as personal lawyers: David Kendall of Williams & Connolly, lead attorney; Little Rock attorney Stephen Engstrom; and Denver attorney James Lyons, author of the 1992 "Lyon's Report" on the Clintons' finances.

NOV. 9: Jean Lewis, the lead RTC investigator on Madison, is abruptly removed from the case.

In Little Rock, Paula Casey recuses herself from the Madison probe.

Nov 16: Mr. Eggleston reaches out to a political appointee at the SBA for confidential papers on the Hale investigation.

WSJ Op-Ed 12/15/95

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December 12, 1995

HAND-DELIVERED

Senator Alfonse M. D'Amato
Chairman, Special Committee to Investigate
Whitewater Development Corporation and Related Matters
534 Dirksen Senate Office Building
Washington, D.C. 20510-6075

Re: William H. Kennedy, III

Dear Senator D'Amato:

I have received the subpoena that the Committee issued on December 8, 1995, directing my client, William H. Kennedy, III, to "[p]roduce any and all documents, including but not limited to, notes, transcripts, memoranda, or recordings, reflecting, referring or relating to a November 5, 1993 meeting attended by William Kennedy at the offices of Williams & Connolly." Your transmittal letter advised Mr. Kennedy that "[i]f you do not intend to comply with this subpoena, the Committee invites you to submit, by December 12, 1995, a legal memoranda which sets forth the basis for your refusal to comply with the subpoena." Accordingly, I am submitting this letter brief on his behalf.[1]

Mr. Kennedy was serving as Associate White House Counsel at the time of the November 5, 1993 meeting. In addition, he had performed legal services for the Clintons before entering government service. He testified at his deposition that he had been instructed that "the subject of that meeting is covered by the attorney-client privilege." See Tr. (11/1/95) at p. 75. He reiterated at the hearings that "I have been instructed that the meeting is covered by the attorney-client privilege and I have been instructed to abide by that privilege." See Tr. (12/5/95) at p. 42.

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[1] I confess at the outset that I am somewhat uncertain about the status of the subpoena. The Committee did not serve the subpoena on Mr. Kennedy, see S. Res. 120, §5(b)(1) (May 17, 1995), nor request me to accept service on Mr. Kennedy's behalf, see C. Wright & A. Miller, 9A Federal Practice and Procedure §2454 at p. 24 (1995) ("Personal service of subpoenas is required . . . . [S]ervice on a person's lawyer will not suffice.").

He testified further that those instructions "come from the White House and Mr. Kendall, the Clintons' personal lawyer." Id. at p. 43.[2]

Under these circumstances, Mr. Kennedy regrets that he may not give the Committee the requested documents. He has no choice in the matter. He is bound by legal and ethical obligations to abide by the instructions he has received from both the White House Counsel's Office and from Mr. and Mrs. Clinton's personal counsel to withhold his notes on the grounds of attorney-client privilege, including the work-product doctrine.

Mr. Kennedy has a professional obligation to abide by his instructions unless and until he is ordered to do otherwise by a court of law. Canon 4 of the ABA Model Code of Professional Responsibility states that "[a] lawyer should preserve the confidences and secrets of a client." Ethical Consideration 4 - 4 provides that "[a] lawyer owes an obligation to advise the client of the attorney-client privilege and timely to assert the privilege unless it is waived by the client." Disciplinary Rule 4-101(B) makes this ethical obligation mandatory. It provides that "a lawyer shall not knowingly: (1) Reveal a confidence or secret of his client." DR 4-101(A) defines "confidence" as "information protected by the attorney-client privilege under applicable law."

The ABA Model Rules of Professional Conduct impose these same duties. Rule 1.6(a) provides that "[a] lawyer shall not reveal information relating to representation of a client unless the client consents after consultation." Comment [4] states that "[a] fundamental principle in the client-lawyer relationship is that the lawyer maintain confidentiality of information relating to the representation." Comment [5] states that "[t]he principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics." Comment [21] states that "[t]he duty of confidentiality continues after the client-lawyer relationship has terminated."

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[2] I would like to call your attention to an apparent error in the official transcript of Mr. Kennedy's testimony at the hearings. Senate Resolution 120 established the Special Committee for the purpose of "conduct[ing] an investigation and public hearings into, and study of, whether improper conduct occurred regarding the way in which White House officials handled documents in the office of White House Deputy Counsel Vincent Foster following his death." See S. Res. 120, §1(b)(1). In contrast, the official transcript of Mr. Kennedy's December 5 testimony bears the caption "Hearing on Improper Handling Of Documents In Deputy White House Counsel Vincent Foster's Office After His Death." This caption indicates that the Committee has already prejudged the matter it was charged to investigate.

Here, Mr. Kennedy has been instructed by the holders of the privilege to assert the privilege on their behalf. It is settled law that "the privilege belongs to the client and not to the lawyer and survives termination of the relationship." 2 Weinstein's Evidence §503(c)[01] at p. 503-113 (1995). He must obey his instructions.

For these reasons, Mr. Kennedy must respectfully decline to produce his notes of the November 5, 1993 meeting. I would like to say, in closing, that I believe it is completely inappropriate for the Committee to make Mr. Kennedy the battleground over which the Committee has chosen to fight the White House on this issue. Mr. Kennedy is a private citizen with no stake in this dispute. There is absolutely no reason why the Committee cannot contest this matter directly with the holders of the privilege rather than with him. See 2 Weinstein's Evidence §503(c)[01] at p. 503-110 ("The privilege clearly belongs to the client, whether or not he is a party to the proceeding in which the privileged communication is sought").

Please do not hesitate to contact me if I can be of any further assistance.

Yours truly,

Paul Castellitto

Paul V. Castellitto

cc: Senator Paul S. Sarbanes

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